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THE

PRINCIPLES

OF

MORAL AND POLITICAL PHILOSOPHY.

BY

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ARCHDEACON OF CARLISLE.

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MORAL PHILOSOPHY.

BOOK IV.

DUTIES TO OURSELVES.

This division of the subject is retained merely for the sake of *method*, by which the writer and the reader are equally assisted. To the subject itself it imports nothing; for, the obligation of all duties being fundamentally the same, it matters little under what class or title any of them are considered. In strictness, there are few duties or crimes which terminate in a man's self; and so far as others are affected by their operation, they have been treated of in some article of the preceding book. We have reserved, however, to this head the *rights of self-defence*; also the consideration of *drunkenness* and *suicide*, as offences against that care of our faculties, and preservation of our persons, which we account duties, and call *duties to ourselves*.

CHAPTER I.

THE RIGHTS OF SELF-DEFENCE.

It has been asserted, that in a state of nature we might lawfully defend the most insignificant right, provided it were a perfect determinate right, by any extremities which the obstinacy of the aggressor rendered necessary. Of this I doubt; because I doubt whether the general rule be worth sustaining at such an expense; and because, apart from the general consequence of yielding to the attempt, it cannot be contended to be for the augmentation of human happiness, that one man should lose his life, or a limb, rather than another a pennyworth of his property. Nevertheless, perfect rights can only be distinguished by their value; and it is impossible to ascertain the value at which the liberty of using extreme violence begins. The person attacked, must balance, as well as he can, between the general consequence of yielding, and the particular effect of resistance.

However, this right, if it exist in a state of nature, is suspended by the establishment of civil society: because *thereby* other remedies are provided against attacks upon our pro-

perty, and because it is necessary to the peace and safety of the community, that the prevention, punishment, and redress of injuries, be adjusted by public laws. Moreover, as the individual is assisted in the recovery of his right, or of a compensation for his right, by the public strength, it is no less equitable than expedient, that he should submit to public arbitration the kind, as well as the measure, of the satisfaction which he is to obtain.

There is one case in which all extremities are justifiable; namely, when our life is assaulted, and it becomes necessary for our preservation to kill the assailant. This is evident in a state of nature; unless it can be shown, that we are bound to prefer the aggressor's life to our own, that is to say, to love our enemy *better* than ourselves, which can never be a debt of justice, nor any where appears to be a duty of charity. Nor is the case altered by our living in civil society; because, by the supposition, the laws of society cannot interpose to protect us, nor, by the nature of the case, compel restitution. This liberty is restrained to cases in which no other probable means of preserving our life remain, as flight, calling for assistance,

disarming the adversary, &c. The rule holds, whether the danger proceed from a voluntary attack, as by an enemy, robber, or assassin; or from an involuntary one, as by a madman, or person sinking in the water, and dragging us after him; or where two persons are reduced to a situation in which one or both of them must perish; as in a shipwreck, where two seize upon a plank, which will support only one; although, to say the truth, these extreme cases, which happen seldom, and hardly, when they do happen, admit of moral agency, are scarcely worth mentioning, much less discussing at length.

The instance which approaches the nearest to the preservation of life, and which seems to justify the same extremities, is the defence of chastity.

In all other cases, it appears to me the safest to consider the taking away of life as authorized by the law of the land; and the person who takes it away, as in the situation of a minister or executioner of the law.

In which view, homicide, in *England*, is justifiable:

1. To prevent the commission of a crime, which, when committed, would be punish-

able with death. Thus, it is lawful to shoot a highwayman, or one attempting to break into a house by night; but not so if the attempt be made in the day-time: which particular distinction, by a consent of legislation that is remarkable, obtained also in the Jewish law, as well as in the laws both of Greece and Rome.

2. In necessary endeavours to carry the law into execution, as in suppressing riots, apprehending malefactors, preventing escapes, &c.

I do not know that the law holds forth its authority to any cases besides those which fall within one or other of the above descriptions; or that, after the exception of immediate danger to life or chastity, the destruction of a human being can be innocent without that authority.

The rights of war are not here taken into the account.

CHAPTER II.

DRUNKENNESS.

DRUNKENNESS is either actual or habitual; just as it is one thing to be drunk, and an-

other to be a drunkard. What we shall deliver upon the subject must principally be understood of a *habit* of intemperance; although *part* of the guilt and danger described, may be applicable to casual excesses; and *all* of it, in a certain degree, forasmuch as every habit is only a repetition of single instances.

The mischief of drunkenness, from which we are to compute the guilt of it, consists in the following bad effects:

1. It betrays most constitutions either to extravagances of anger, or sins of lewdness.

2. It disqualifies men for the duties of their station, both by the temporary disorder of their faculties, and at length by a constant incapacity and stupefaction.

3. It is attended with expenses, which can often be ill spared.

4. It is sure to occasion uneasiness to the family of the drunkard.

5. It shortens life.

To these consequences of drunkenness must be added the peculiar danger and mischief of the *example*. Drunkenness is a social festive vice; apt, beyond any vice that can be mentioned, to draw in others by the example. The drinker collects his circle;

the circle naturally spreads; of those who are drawn within it, many become the corrupters and centres of sets and circles of their own; every one countenancing, and perhaps emulating the rest, till a whole neighbourhood be infected from the contagion of a single example. This account is confirmed by what we often observe of drunkenness, that it is a *local* vice; found to prevail in certain countries, in certain districts of a country, or in particular towns, without any reason to be given for the fashion, but that it had been introduced by some popular examples. With this observation upon the spreading quality of drunkenness, let us connect a remark which belongs to the several evil effects above recited. The consequences of a vice, like the symptoms of a disease, though they be all enumerated in the description, seldom all meet in the same subject. In the instance under consideration, the age and temperature of one drunkard may have little to fear from inflammations of lust or anger; the fortune of a second may not be injured by the expense; a third may have no family to be disquieted by his irregularities; and a fourth may possess a constitution fortified against the poison of strong liquors.

But if, as we always ought to do, we comprehend within the consequences of our conduct the mischief and tendency of the example, the above circumstances, however fortunate for the individual, will be found to vary the guilt of his intemperance less, probably, than he supposes. The moralist may expostulate with him thus: Although the waste of time and of money be of small importance to you, it may be of the utmost to some one or other whom your society corrupts. Repeated or long-continued excesses, which hurt not *your* health, may be fatal to your companion. Although you have neither wife, nor child, nor parent, to lament your absence from home, or expect your return to it with terror; other families, in which husbands and fathers have been invited to share in your ebriety, or encouraged to imitate it, may justly lay their misery or ruin at your door. This will hold good whether the person seduced be seduced immediately by you, or the vice be propagated from you to him through several intermediate examples. All these considerations it is necessary to assemble, to judge truly of a vice, which usually meets with milder names and more indulgence than it deserves.

I omit those outrages upon one another, and upon the peace and safety of the neighbourhood, in which drunken revels often end; and also those deleterious and maniacal effects which strong liquors produce upon particular constitutions; because, in general propositions concerning drunkenness, no consequences should be included, but what are constant enough to be generally expected.

Drunkenness is repeatedly forbidden by Saint Paul: "Be not drunk with wine, where-"in is excess." "Let us walk honestly as in "the day, not in rioting and drunkenness." "Be not deceived: neither fornicators, nor "*drunkards*, nor revilers, nor extortioners, "shall inherit the kingdom of God." Eph. v. 18.; Rom. xiii. 13.; 1 Cor. vi. 9, 10. The same apostle likewise condemns drunkenness, as peculiarly inconsistent with the Christian profession:—"They that be drunken, are "drunken in the night: but let us, who are "of the day, be sober." 1 Thess. v. 7, 8. We are not concerned with the argument; the words amount to a prohibition of drunkenness; and the authority is conclusive.

It is a question of some importance, how far drunkenness is an excuse for the crimes which the drunken person commits.

In the solution of this question, we will first suppose the drunken person to be altogether deprived of moral agency, that is to say, of all reflection and foresight. In this condition, it is evident that he is no more capable of guilt than a madman; although, like him, he may be extremely mischievous. The only guilt with which he is chargeable, was incurred at the time when he voluntarily brought himself into this situation. And as every man is responsible for the consequences which he foresaw, or might have foreseen, and for no other, this guilt will be in proportion to the probability of such consequences ensuing. From which principle results the following rule, *viz.* that the guilt of any action in a drunken man bears the same proportion to the guilt of the like action in a sober man, that the probability of its being the consequence of drunkenness bears to absolute certainty. By virtue of this rule, those vices which are the *known* effects of drunkenness, either in general, or upon particular constitutions, are, in all, or in men of such constitutions, nearly as criminal as if committed with all their faculties and senses about them.

If the privation of reason be only partial,

the guilt will be of a mixed nature. For so much of his self-government as the drunkard retains, he is as responsible then as at any other time. He is entitled to no abatement beyond the strict proportion in which his moral faculties are impaired. Now I call the guilt of the crime, if a sober man had committed it, the *whole* guilt. A person in the condition we describe, incurs part of this at the instant of perpetration; and by bringing himself into such a condition, he incurred that fraction of the remaining part, which the danger of this consequence was of an integral certainty. For the sake of illustration, we are at liberty to suppose, that a man loses half his moral faculties by drunkenness; this leaving him but half his responsibility, he incurs, when he commits the action, half of the whole guilt. We will also suppose that it was known beforehand, that it was an even chance, or half a certainty, that this crime would follow his getting drunk. This makes him chargeable with half of the remainder; so that, altogether, he is responsible in three fourths of the guilt which a sober man would have incurred by the same action.

I do not mean that any real case can be

reduced to numbers, or the calculation be ever made with arithmetical precision; but these are the principles, and this the rule by which our general admeasurement of the guilt of such offences should be regulated.

The appetite for intoxicating liquors appears to me to be almost always *acquired*. One proof of which is, that it is apt to return only at particular times and places; as after dinner, in the evening, on the market-day, at the market-town, in such a company, at such a tavern. And this may be the reason that, if a habit of drunkenness be ever overcome, it is upon some change of place, situation, company, or profession. A man sunk deep in a habit of drunkenness will, upon such occasions as these, when he finds himself loosened from the associations which held him fast, sometimes make a plunge, and get out. In a matter of so great importance, it is well worth while, where it is in any degree practicable, to change our habitation and society, for the sake of the experiment.

Habits of drunkenness commonly take their rise either from a fondness for, and connexion with, some company, or some companion, already addicted to this practice: which affords an almost irresistible in-

vitation to take a share in the indulgences which those about us are enjoying with so much apparent relish and delight; or from want of regular employment, which is sure to let in many superfluous cravings and customs, and often this amongst the rest; or, lastly, from grief, or fatigue, both which strongly solicit that relief which inebriating liquors administer, and also furnish a specious excuse for complying with the inclination. But the habit, when once set in, is continued by different motives from those to which it owes its origin. Persons addicted to excessive drinking suffer, in the intervals of sobriety, and near the return of their accustomed indulgence, a faintness and oppression *circa præcordia*, which it exceeds the ordinary patience of human nature to endure. This is usually relieved for a short time by a repetition of the same excess; and to this relief, as to the removal of every long-continued pain, they who have once experienced it, are urged almost beyond the power of resistance. This is not all: as the liquor loses its *stimulus*, the dose must be increased, to reach the same pitch of elevation, or ease; which increase proportionably accelerates the progress of all the maladies

that drunkenness brings on. Whoever reflects upon the violence of the craving in the advanced stages of the habit, and the fatal termination to which the gratification of it leads, will, the moment he perceives in himself the first symptoms of a growing inclination to intemperance, collect his resolution to this point; or (what perhaps he will find his best security) arm himself with some peremptory rule, as to the times and quantity of his indulgences. I own myself a friend to the laying down of rules to ourselves of this sort, and rigidly abiding by them. They may be exclaimed against as stiff, but they are often salutary. Indefinite resolutions of abstemiousness are apt to yield to *extraordinary* occasions; and *extraordinary* occasions to occur perpetually. Whereas, the stricter the rule is, the more tenacious we grow of it; and many a man will abstain rather than break his rule, who would not easily be brought to exercise the same mortification from higher motives. Not to mention, that when our rule is once known, we are provided with an answer to every importunity.

There is a difference, no doubt, between convivial intemperance, and that solitary

sottishness which waits neither for company nor invitation. But the one, I am afraid, commonly ends in the other: and this last is the basest degradation to which the faculties and dignity of human nature can be reduced.

CHAPTER III.

SUICIDE.

THERE is no subject in morality in which the consideration of *general consequences* is more necessary than in this of Suicide. Particular and extreme cases of suicide may be imagined, and may arise, of which it would be difficult to assign the particular mischief, or from that consideration alone to demonstrate the guilt; and these cases have been the chief occasion of confusion and doubtfulness in the question: albeit this is no more than what is sometimes true of the most acknowledged vices. I could propose many possible cases even of murder, which, if they were detached from the general rule, and governed by their own particular consequences alone, it would be no easy undertaking to prove criminal.

The true question in this argument is no other than this: May every man who chooses to destroy his life, innocently do so? Limit and distinguish the subject as you can, it will come at last to this question.

For, shall we say, that we are then at liberty to commit suicide, when we find our continuance in life become useless to mankind? Any one who pleases, may make himself useless; and melancholy minds are prone to think themselves useless, when they really are not so. Suppose a law were promulgated, allowing each private person to destroy every man he met, whose longer continuance in the world he judged to be *useless;* who would not condemn the latitude of such a rule? who does not perceive that it amounts to a permission to commit murder at pleasure? A similar rule, regulating the rights over our own lives, would be capable of the same extension. Beside which, no one is *useless* for the purpose of this plea, but he who has lost every capacity and opportunity of being useful, together with the possibility of recovering any degree of either; which is a state of such complete destitution and despair, as cannot, I believe, be predicated of any man living.

Or rather, shall we say that to depart voluntarily out of life, is lawful for those alone who leave none to lament their death? If this consideration is to be taken into the account at all, the subject of debate will be, not whether there are any to sorrow for us, but whether their sorrow for our death will exceed that which we should suffer by continuing to live. Now this is a comparison of things so indeterminate in their nature, capable of so different a judgement, and concerning which the judgement will differ so much, according to the state of the spirits, or the pressure of any present anxiety, that it would vary little, in hypochondriacal constitutions, from an unqualified license to commit suicide, whenever the distresses which men felt, or fancied, rose high enough to overcome the pain and dread of death. Men are never tempted to destroy themselves but when under the oppression of some grievous uneasiness: the restrictions of the rule therefore ought to apply to these cases. But what effect can we look for from a rule which proposes to weigh our own pain against that of another; the misery that is felt, against that which is only conceived; and in

so corrupt a balance as the party's own distempered imagination?

In like manner, whatever other rule you assign, it will ultimately bring us to an indiscriminate toleration of suicide, in all cases in which there is danger of its being committed. It remains, therefore, to inquire what would be the effect of such a toleration: evidently, the loss of many lives to the community, of which some might be useful or important; the affliction of *many* families, and the consternation of *all*: for mankind must live in continual alarm for the fate of their friends and dearest relations, when the restraints of religion and morality are withdrawn; when every disgust which is powerful enough to tempt men to suicide, shall be deemed sufficient to justify it; and when the follies and vices, as well as the inevitable calamities, of human life, so often make existence a burthen.

A second consideration, and perfectly distinct from the former, is this: by continuing in the world, and in the exercise of those virtues which remain within our power, we retain the opportunity of meliorating our condition in a future state. This argument, it is true, does not in strictness prove suicide

to be a crime; but if it supply a motive to dissuade us from committing it, it amounts to much the same thing. Now there is no condition in human life which is not capable of some virtue, active or passive. Even piety and resignation under the sufferings to which we are called, testify a truth and acquiescence in the Divine counsels, more acceptable, perhaps, than the most prostrate devotion; afford an edifying example to all who observe them; and may hope for a recompense among the most arduous of human virtues. These qualities are always in the power of the miserable; indeed of none but the miserable.

The two considerations above stated, belong to all cases of suicide whatever. Beside which general reasons, each case will be aggravated by its own proper and particular consequences; by the duties that are deserted; by the claims that are defrauded; by the loss, affliction, or disgrace, which our death, or the manner of it, causes our family, kindred, or friends; by the occasion we give to many to suspect the sincerity of our moral and religious professions, and, together with ours, those of all others; by the reproach we draw upon our order, calling, or

sect; in a word, by a great variety of evil consequences attending upon peculiar situations, with some or other of which every actual case of suicide is chargeable.

I refrain from the common topics of "deserting our post," "throwing up our trust," "rushing uncalled into the presence of our "Maker," with some others of the same sort, not because they are *common* (for that rather affords a presumption in their favour), but because I do not perceive in them much argument to which an answer may not easily be given.

Hitherto we have pursued upon the subject the light of nature alone; taking however into the account, the expectation of a future existence, without which our reasoning upon this, as indeed all reasoning upon moral questions, is vain. We proceed to inquire, whether any thing is to be met with in Scripture, which may add to the probability of the conclusions we have been endeavouring to support. And here I acknowledge, that there is to be found neither any express determination of the question, nor sufficient evidence to prove that the case of suicide was in the contemplation of the law which prohibited murder. Any inference, there-

fore, which we deduce from Scripture, can be sustained only by construction and implication: that is to say, although they, who were authorised to instruct mankind, have not decided a question, which never, so far as appears to us, came before them; yet, I think, they have left enough to constitute a presumption how they would have decided it, had it been proposed or thought of.

What occurs to this purpose, is contained in the following observations:

1. Human life is spoken of as a *term* assigned or prescribed to us: "Let us run "with patience the race that is set before "us."—"I have finished my course."—That "I may finish my course with joy."—"Ye "have need of patience, that, after ye have "done the will of God, ye might receive the "promise."—These expressions appear to me inconsistent with the opinion, that we are at liberty to determine the duration of our lives for ourselves. If this were the case, with what propriety could life be called a *race that is set before us;* or, which is the same thing, "*our course;*" that is, the course set out or appointed to us? The remaining quotation is equally strong;—"That, after ye "have done the will of God, ye might re-

"ceive the promise." The most natural meaning that can be given to the words, "after ye have done the will of God," is, after ye have discharged the duties of life so long as God is pleased to continue you in it. According to which interpretation, the text militates strongly against suicide: and they who reject this paraphrase, will please to propose a better.

2. There is not one quality which Christ and his apostles inculcate upon their followers so often, or so earnestly, as that of patience under affliction. Now this virtue would have been in a great measure superseded, and the exhortations to it might have been spared, if the disciples of his religion had been at liberty to quit the world as soon as they grew weary of the ill usage which they received in it. When the evils of life pressed sore, they were to look forward to a "far more exceeding and eternal weight of "glory;" they were to receive them, "as "chastenings of the Lord," as intimations of his care and love: by these and the like reflections they were to support and improve themselves under their sufferings; but not a hint has any where escaped of seeking relief in a voluntary death. The following text in

particular strongly combats all impatience of distress, of which the greatest is that which prompts to acts of suicide :—" Consider Him " that endured such contradiction of sinners " against himself, lest ye be wearied and faint " in your minds." I would offer my comment upon this passage, in these two queries : first, Whether a Christian convert, who had been impelled by the continuance and urgency of his sufferings to destroy his own life, would not have been thought by the author of this text " to have been weary," to have " fainted in his mind," to have fallen off from that example which is here proposed to the meditation of Christians in distress? And yet, secondly, Whether such an act would not have been attended with all the circumstances of mitigation which can excuse or extenuate suicide at this day?

3. The *conduct* of the apostles, and of the Christians of the apostolic age, affords no obscure indication of their sentiments upon this point. They lived, we are sure, in a confirmed persuasion of the existence, as well as of the happiness, of a future state. They experienced in this world every extremity of external injury and distress. To die, was gain. The change which death brought with it was,

in their expectation, infinitely beneficial. Yet it never, that we can find, entered into the intention of one of them to hasten this change by an act of suicide; from which it is difficult to say what motive could have so universally withheld them, except an apprehension of some unlawfulness in the expedient.

Having stated what we have been able to collect in opposition to the lawfulness of suicide, by way of direct proof, it seems unnecessary to open a separate controversy with all the arguments which are made use of to defend it; which would only lead us into a repetition of what has been offered already. The following argument, however, being somewhat more tificial and imposing than the rest, as well as distinct from the general consideration of the subject, cannot so properly be passed over. If we deny to the individual a right over his own life, it seems impossible, it is said, to reconcile with the law of nature that right which the state claims and exercises over the lives of its subjects, when it ordains or inflicts capital punishments. For this right, like all other just authority in the state, can only be derived from the compact and virtual consent of the citizens which compose the state; and it seems self-evident, if any principle in mo-

rality be so, that no one, by his consent, can transfer to another a right which he does not possess himself. It will be equally difficult to account for the power of the state to commit its subjects to the dangers of war, and to expose their lives without scruple in the field of battle; especially in offensive hostilities, in which the privileges of self-defence cannot be pleaded with any appearance of truth: and still more difficult to explain, how in such, or in any circumstances, prodigality of life can be a virtue, if the preservation of it be a duty of our nature.

This whole reasoning sets out from one error, namely, that the state acquires its right over the life of the subject from the subject's own consent, as a part of what originally and personally belonged to himself, and which he has made over to his governors. The truth is, the state derives this right neither from the consent of the subject, nor through the medium of that consent; but, as I may say, immediately from the donation of the Deity. Finding that such a power in the sovereign of the community is expedient, if not necessary, for the community itself, it is justly presumed to be the will of God, that the sovereign should possess and exercise it. It is this *pre-*

sumption which constitutes the right; it is the same indeed which constitutes every other: and if there were the like reasons to authorise the presumption in the case of private persons, suicide would be as justifiable as war, or capital executions. But, until it can be shown that the power over human life may be converted to the same advantage in the hands of individuals over their own, as in those of the state over the lives of its subjects, and that it may be intrusted with equal safety to both, there is no room for arguing, from the existence of such a right in the latter, to the toleration of it in the former.

MORAL PHILOSOPHY.

BOOK V.

DUTIES TOWARDS GOD.

CHAPTER I.

DIVISION OF THESE DUTIES.

In one sense, every duty is a duty towards God, since it is his will which makes it a duty: but there are some duties of which God is the object, as well as the author: and these are peculiarly, and in a more appropriated sense, called *duties towards God.*

That silent piety, which consists in a habit of tracing out the Creator's wisdom and goodness in the objects around us, or in the history of his dispensations; of referring the blessings we enjoy to his bounty, and of resorting in our distresses to his succour; may possibly be more acceptable to the Deity than any visible expressions of devotion

whatever. Yet these latter (which, although they may be expelled, are not superseded by the former) compose the only part of the subject which admits of direction or disquisition from a moralist.

Our duty towards God, so far as it is external, is divided into *worship* and *reverence*. God is the immediate object of both; and the difference between them is, that the one consists in action, the other in forbearance. When we go to church on the Lord's day, led thither by a sense of duty towards God, we perform an act of worship; when, from the same motive, we rest in a journey upon that day, we discharge a duty of reverence.

Divine worship is made up of adoration, thanksgiving, and prayer.—But, as what we have to offer concerning the two former may be observed of prayer, we shall make that the title of the following chapters, and the direct subject of our consideration.

CHAPTER II.

OF THE DUTY AND OF THE EFFICACY OF PRAYER, SO FAR AS THE SAME APPEAR FROM THE LIGHT OF NATURE.

When one man desires to obtain any thing of another, he betakes himself to entreaty: and this may be observed of mankind in all ages and countries of the world. Now what is universal, may be called natural; and it seems probable that God, as our supreme governor, should expect that towards himself, which by a natural impulse, or by the irresistible order of our constitution, he has prompted us to pay to every other being on whom we depend.

The same may be said of thanksgiving.

Prayer likewise is necessary to keep up in the minds of mankind a sense of God's agency in the universe, and of their own dependency upon him.

Yet, after all, the duty of prayer depends upon its efficacy: for I confess myself unable to conceive, how any man can pray, or be

obliged to pray, who expects nothing from his prayers; but who is persuaded, at the time he utters his request, that it cannot possibly produce the smallest impression upon the being to whom it is addressed, or advantage to himself. Now the efficacy of prayer imports that we obtain something in consequence of praying, which we should not have received without prayer; against all expectation of which, the following objection has been often and seriously alleged;—"If "it be most agreeable to perfect wisdom and "justice that we should receive what we de-"sire, God, as perfectly wise and just, will "give it to us without asking; if it be not "agreeable to these attributes of his nature, "our entreaties cannot move him to give it "us, and it were impious to expect that they "should." In fewer words, thus: "If what "we request be fit for us, we shall have it "without praying; if it be not fit for us, we "cannot obtain it by praying." This objection admits but of one answer, namely, that it may be agreeable to perfect wisdom to grant that to our prayers, which it would not have been agreeable to the same wisdom to have given us without praying for. But what virtue, you will ask, is there in prayer.

which should make a favour consistent with wisdom, which would not have been so without it? To this question, which contains the whole difficulty attending the subject, the following possibilities are offered in reply:

1. A favour granted to prayer may be more apt, on that very account, to produce good effects upon the person obliged. It may hold in the Divine bounty, what experience has raised into a proverb in the collation of human benefits, that what is obtained without asking, is oftentimes received without gratitude.

2. It may be consistent with the wisdom of the Deity to withhold his favours till they be asked for, as an expedient to encourage devotion in his rational creation, in order thereby to keep up and circulate a knowledge and sense of their dependency upon *him*.

3. Prayer has a natural tendency to amend the petitioner himself; and thus to bring him within the rules which the wisdom of the Deity has prescribed to the dispensation of his favours.

If these, or any other assignable suppositions, serve to remove the apparent repugnancy between the success of prayer and

the character of the Deity, it is enough; for the question with the petitioner is not from which, out of many motives, God may grant his petition, or in what particular manner he is moved by the supplications of his creatures; but whether it be consistent with his nature to be moved at all, and whether there be any conceivable motives which may dispose the Divine Will to grant the petitioner what he wants, in consequence of his praying for it. It is sufficient for the petitioner, that he gain his end. It is not necessary to devotion, perhaps not very consistent with it, that the circuit of causes, by which his prayers prevail, should be known to the petitioner, much less that they should be present to his imagination at the time. All that is necessary is, that there be no impossibility apprehended in the matter.

Thus much must be conceded to the objection; that prayer cannot reasonably be offered to God with all the same views, with which we oftentimes address our entreaties to men (views which are not commonly or easily separated from it), *viz.* to inform them of our wants and desires; to tease them out by importunity; to work upon their indolence or compassion, in order to persuade

them to do what they ought to have done before, or ought not to do at all.

But suppose there existed a prince, who was known by his subjects to act, of his own accord, always and invariably for the best; the situation of a petitioner, who solicited a favour or pardon from such a prince, would sufficiently resemble ours: and the question with him, as with us, would be, whether, the character of the prince being considered, there remained any chance that he should obtain from him by prayer, what he would not have received without it. I do not conceive that the character of such a prince would necessarily exclude the effect of his subject's prayers; for, when that prince reflected, that the earnestness and humility of the supplication had generated in the suppliant a frame of mind, upon which the pardon or favour asked would produce a permanent and active sense of gratitude; that the granting of it to prayer would put others upon praying to him, and by that means preserve the love and submission of his subjects, upon which love and submission their own happiness, as well as his glory, depended; that, beside that the memory of the particular kindness would be heightened and pro-

longed by the anxiety with which it had been sued for, prayer had in other respects so disposed and prepared the mind of the petitioner, as to render capable of future services him who before was unqualified for any: might not that prince, I say, although he proceeded upon no other considerations than the strict rectitude and expediency of the measure, grant a favour or pardon to *this man*, which he did not grant to *another*, who was too proud, too lazy, or too busy, too indifferent whether he received it or not, or too insensible of the sovereign's absolute power to give or to withhold it, ever to ask for it? or even to the *philosopher*, who, from an opinion of the fruitlessness of all addresses to a prince of the character which he had formed to himself, refused in his own example, and discouraged in others, all outward returns of gratitude, acknowledgements of duty, or application to the sovereign's mercy, or bounty; the disuse of which (seeing affections do not long subsist which are never expressed) was followed by a decay of loyalty and zeal amongst his subjects, and threatened to end in a forgetfulness of his rights, and a contempt of his authority? These, together with other assignable con-

siderations, and some perhaps inscrutable, and even inconceivable by the persons upon whom his will was to be exercised, might pass in the mind of the prince, and move his counsels; whilst nothing, in the mean time, dwelt in the petitioner's thoughts but a sense of his own grief and wants; of the power and goodness from which alone he was to look for relief; and of his obligation to endeavour, by future obedience, to render that person propitious to his happiness, in whose hands, and at the disposal of whose mercy, he found himself to be.

The objection to prayer supposes, that a perfectly wise being must necessarily be inexorable: but where is the proof, that *inexorability* is any part of perfect wisdom; especially of that wisdom which is explained to consist in bringing about the most beneficial ends by the wisest means?

The objection likewise assumes another principle, which is attended with considerable difficulty and obscurity, namely, that upon every occasion there is *one*, and only *one*, mode of acting *for the best*; and that the Divine Will is necessarily determined and confined to that mode: both which positions presume a knowledge of universal

nature, much beyond what we are capable of attaining. Indeed, when we apply to the Divine Nature such expressions as these, "God *must* always do what is right," "God "*cannot*, from the moral perfection and ne- "cessity of his nature, act otherwise than for "the best," we ought to apply them with much indeterminateness and reserve; or rather, we ought to confess, that there is something in the subject out of the reach of our apprehension; for, in our apprehension, to be under a necessity of acting according to any rule, is inconsistent with free agency; and it makes no difference, which we can understand, whether the necessity be internal or external, or that the rule is the rule of perfect rectitude.

But efficacy is ascribed to prayer without the proof, we are told, which can alone in such a subject produce conviction,—the confirmation of experience. Concerning the appeal to experience, I shall content myself with this remark, that if prayer were suffered to disturb the order of second causes appointed in the universe too much, or to produce its effects with the same regularity that they do, it would introduce a change into human affairs, which in some important re-

spects would be evidently for the worse. Who, for example, would labour, if his necessities could be supplied with equal certainty by prayer? How few would contain within any bounds of moderation those passions and pleasures, which at present are checked only by disease, or the dread of it, if prayer would infallibly restore health? In short, if the efficacy of prayer were so constant and observable as to be relied upon *beforehand*, it is easy to foresee that the conduct of mankind would, in proportion to that reliance, become careless and disorderly. It is possible, in the nature of things, that our prayers may, in many instances, be efficacious, and yet our experience of their efficacy be dubious and obscure. Therefore, if the light of nature instruct us by any other arguments to hope for effect from prayer; still more, if the Scriptures authorise these hopes by promises of acceptance; it seems not a sufficient reason for calling in question the reality of such effects, that our observations of them are ambiguous; especially since it appears probable, that this very ambiguity is necessary to the happiness and safety of human life.

But some, whose objections do not exclude

all prayer, are offended with the mode of prayer in use amongst us, and with many of the subjects, which are almost universally introduced into public worship, and recommended to private devotion. To pray for particular favours by name, is to dictate, it has been said, to Divine wisdom and goodness; to intercede for others, especially for whole nations and empires, is still worse; it is to presume that we possess such an interest with the Deity, as to be able, by our applications, to bend the most important of his counsels; and that the happiness of others, and even the prosperity of communities, is to depend upon this interest, and upon our choice. Now, how unequal soever our knowledge of the Divine œconomy may be to the solution of this difficulty, which requires perhaps a comprehension of the entire plan, and of all the ends of God's moral government, to explain satisfactorily, we can understand one thing concerning it, that it is, after all, nothing more than the making of one man the instrument of happiness and misery to another; which is perfectly of a piece with the course and order that obtain, and which we must believe were intended to obtain, in human affairs. Why may we not

be assisted by the prayers of other men, who are beholden for our support to their labour? Why may not our happiness be made in some cases to depend upon the intercession, as it certainly does in many upon the good offices, of our neighbours? The happiness and misery of great numbers we see oftentimes at the disposal of one man's choice, or liable to be much affected by his conduct: what greater difficulty is there in supposing, that the prayers of an individual may avert a calamity from multitudes, or be accepted to the benefit of whole communities?

CHAPTER III.

OF THE DUTY AND EFFICACY OF PRAYER AS REPRESENTED IN SCRIPTURE.

The reader will have observed, that the reflections stated in the preceding chapter, whatever truth and weight they may be allowed to contain, rise many of them no higher than to negative arguments in favour of the propriety of addressing prayer to God.

To prove that the efficacy of prayers is not inconsistent with the attributes of the Deity, does not prove that prayers are actually efficacious: and in the want of that unequivocal testimony, which experience alone could afford to this point (but which we do not possess, and have seen good reason why we are not to expect), the light of nature leaves us to controverted probabilities, drawn from the impulse by which mankind have been almost universally prompted to devotion, and from some beneficial purposes, which, it is conceived, may be better answered by the audience of prayer than by any other mode of communicating the same blessings. The revelations which we deem authentic, completely supply this defect of natural religion. They require prayer to God as a duty; and they contain positive assurance of its efficacy and acceptance. We could have no reasonable motive for the exercise of prayer, without believing that it may avail to the relief of our wants. This belief can only be founded, either in a sensible experience of the effect of prayer, or in promises of acceptance signified by Divine authority. Our knowledge would have come to us in the former way, less capable indeed of doubt, but sub-

jected to the abuses and inconveniences briefly described above; in the latter way, that is, by authorising significations of God's general disposition to hear and answer the devout supplications of his creatures, we are encouraged to pray, but not to place such a dependence upon prayer, as might relax other obligations, or confound the order of events and of human expectations.

The Scriptures not only affirm the propriety of prayer in general, but furnish precepts or examples which justify some topics and some modes of prayer that have been thought exceptionable. And as the whole subject rests so much upon the foundation of Scripture, I shall put down at length texts applicable to the five following heads: to the duty and efficacy of prayer in general; of prayer for particular favours by name; for public national blessings; of intercession for others; of the repetition of unsuccessful prayers.

1. Texts enjoining prayer in general: "Ask, and it shall be given you; seek, and "ye shall find:—If ye, being evil, know how "to give good gifts unto your children, "how much more shall your Father, which "is in heaven, give good things to them

" that ask him?"—" Watch ye, therefore, " and *pray always*, that ye may be account- " ed worthy to escape all those things that " shall come to pass, and to stand before " the Son of Man."—" Serving the Lord, " rejoicing in hope, patient in tribulation, " *continuing constant in prayer.*"—" Be " careful for nothing, but in every thing *by* " *prayer and supplication*, with thanksgiv- " ing, let your requests be made known unto " God."—" I will, therefore, that men *pray* " *every where*, lifting up holy hands without " wrath and doubting."—" *Pray without* " *ceasing.*" Matt. vii. 7. 11; Luke, xxi. 36; Rom. xii. 12; Philipp. iv. 6; 1 Thess. v. 17; 1 Tim. ii. 8. Add to these, that Christ's reproof of the ostentation and prolixity of pharisaical prayers, and his recommendation to his disciples, of retirement and simplicity in theirs, together with his dictating a particular form of prayer, all presuppose prayer to be an acceptable and availing service.

2. Examples of prayer for particular favours by name: " For this thing (to wit, " some bodily infirmity, which he calls ' a " ' thorn given him in the flesh') I besought " the Lord thrice, that it might depart from " me."—" Night and day praying exceed-

" ingly, that we *might see your face*, and " perfect that which is lacking in your " faith." 2 Cor. xii. 8; 1 Thess. iii. 10.

3. Directions to pray for national or public blessings: " *Pray for the peace of* " *Jerusalem.*"—" Ask ye of the Lord rain, " in the time of the latter rain; so the Lord " shall make bright clouds, and give them " showers of rain, to every one grass in the " field."—" I exhort, therefore, that first of " all, supplications, prayers, intercessions, " and giving of thanks, be made for all men; " for kings, and for all that are in authority, " that we may lead a quiet and peaceable " life, in all godliness and honesty; for this " is good and acceptable in the sight of God " our Saviour." Psalm cxxii. 6; Zech. x. 1; 1 Tim. ii. 1, 2, 3.

4. Examples of intercession, and exhortations to intercede for others:—" And " Moses besought the Lord his God, and said, " Lord, why doth thy wrath wax hot against " thy people? Remember Abraham, Isaac, " and Israel, thy servants. And the Lord " repented of the evil which he thought to " do unto his people."—" Peter, therefore, " was kept in prison, but prayer was made " without ceasing of the church unto God

"*for him.*" "For God is my witness, that "without ceasing *I make mention of you* "*always in my prayers.*"—"Now I beseech "you, brethren, for the Lord Jesus Christ's "sake, and for the love of the Spirit, that ye "strive together with me, in your *prayers* "*for me.*"—"Confess your faults one to ano- "ther, and *pray one for another*, that ye may "be healed: the effectual fervent prayer of "a righteous man availeth much." Exod. xxxii. 11; Acts, xii. 5; Rom. i. 9. xv. 30; James, v. 16.

5. Declarations and examples authorising the repetition of unsuccessful prayer: "And "he spake a parable unto them, to this end, "that men ought always to pray, and not to "faint."—"And he left them, and went "away again, and prayed *the third time, say-* "*ing the same words.*"—"For this thing I be- "sought the Lord *thrice*, that it might de- "part from me." Luke, xviii. 1; Matt. xxvi. 44; 2 Cor. xii. 8*.

* The reformed Churches of Christendom, sticking close in this article to their guide, have laid aside prayers for the dead, as authorised by no precept or precedent found in Scripture. For the same reason they properly reject the invocation of saints; as also because such invocation suppose, in the saints whom they address, a knowledge which can perceive what passes in different regions of the earth at the same time. And they deem it too

CHAPTER VI

OF PRIVATE PRAYER, FAMILY PRAYER, AND PUBLIC WORSHIP.

CONCERNING these three descriptions of devotion, it is first of all to be observed, that each has its separate and peculiar use; and therefore, that the exercise of one species of worship, however regular it be, does not supersede, or dispense with, the obligation of either of the other two.

. *Private Prayer* is recommended for the sake of the following advantages:

Private wants cannot always be made the subject of public prayer: but whatever reason there is for praying at all, there is the same for making the sore and grief of each man's own heart the business of his application to God. This must be the office of private exercises of devotion, being imperfectly, if at all, practicable in any other.

Private prayer is generally more devout

much to take for granted, without the smallest intimation of such a thing in Scripture, that any created being possesses a faculty little short of that omniscience and omnipresence which they ascribe to the Deity.

and earnest than the share we are capable of taking in joint acts of worship; because it affords leisure and opportunity for the circumstantial recollection of those personal wants, by the remembrance and ideas of which the warmth and earnestness of prayer are chiefly excited.

Private prayer, in proportion as it is usually accompanied with more actual thought and reflection of the petitioner's own, has a greater tendency than other modes of devotion to revive and fasten upon the mind the general impressions of religion. Solitude powerfully assists this effect. When a man finds himself alone in communication with his Creator, his imagination becomes filled with a conflux of awful ideas concerning the universal agency, and invisible presence, of that Being; concerning what is likely to become of himself; and of the superlative importance of providing for the happiness of his future existence, by endeavours to please *him* who is the arbiter of his destiny: reflections, which, whenever they gain admittance, for a season overwhelm all others; and leave, when they depart, a solemnity upon the thoughts that will seldom fail, in some degree, to affect the conduct of life.

Private prayer, thus recommended by its own propriety, and by advantages not attainable in any form of religious communion, receives a superior sanction from the authority and example of Christ; "When thou "prayest, enter into thy closet; and when "thou hast shut the door, pray to thy Father, "which is in secret; and thy Father, which "seeth in secret, shall reward thee openly." —"And when he had sent the multitudes "away, he went up into a mountain *apart to* "*pray.*" Matt. vi. 6; xiv. 23.

II. *Family prayer.*

The peculiar use of family piety consists in its influence upon servants, and the young members of a family, who want sufficient seriousness and reflection to retire of their own accord to the exercise of private devotion, and whose attention you cannot easily command in public worship. The example also and authority of a father and master act in this way with the greatest force; for his private prayers, to which his children and servants are not witnesses, act not at all upon them as examples; and his attendance upon public worship they will readily impute to fashion, to a care to preserve appearances, to a concern for decency and character, and to

many motives besides a sense of duty to God. Add to this, that forms of public worship, in proportion as they are more comprehensive, are always less interesting than family prayers; and that the ardour of devotion is better supported, and the sympathy more easily propagated, through a small assembly, connected by the affections of domestic society, than in the presence of a mixed congregation.

III. *Public worship.*

If the worship of God be a duty of religion, public worship is a necessary institution; forasmuch as, without it, the greater part of mankind would exercise no religious worship at all.

These assemblies afford also, at the same time, opportunities for moral and religious instruction to those who otherwise would receive none. In all protestant, and in most Christian countries, the elements of natural religion, and the important parts of the Evangelic history, are familiar to the lowest of the people. This competent degree and general diffusion of religious knowledge amongst all orders of Christians, which will appear a great thing when compared with the intellectual condition of barbarous nations, can fair-

ly, I think, be ascribed to no other cause than the regular establishment of assemblies for divine worship; in which, either portions of Scripture are recited and explained, or the principles of Christian erudition are so constantly taught in sermons, incorporated with liturgies, or expressed in extemporè prayer, as to imprint, by the very repetition, some knowledge and memory of these subjects upon the most unqualified and careless hearer.

The two reasons above stated, bind all the members of a community to uphold public worship by their presence and example, although the helps and opportunities which it affords may not be necessary to the devotion or edification of all; and to some may be useless: for it is easily foreseen, how soon religious assemblies would fall into contempt and disuse, if that class of mankind who are above seeking instruction in them, and want not that their own piety should be assisted by either forms or society in devotion, were to withdraw their attendance; especially when it is considered, that all who please, are at liberty to rank themselves of this class. This argument meets the only serious apology that can be made for the absenting of ourselves from

public worship. "Surely (some will say) I "may be excused from going to church, so "long as I pray at home; and have no rea- "son to doubt but that my prayers are as ac- "ceptable and efficacious in my closet, as in "a cathedral; still less can I think myself "obliged to sit out a tedious sermon, in order "to hear what is known already, what is bet- "ter learnt from books, or suggested by me- "ditation." They, whose qualifications and habits best supply to themselves all the effect of public ordinances, will be the last to prefer this excuse, when they advert to the *general consequence* of sitting up such an exemption, as well as when they consider the *turn* which is sure to be given in the neighbourhood to their absence from public worship. You stay from church, to employ the sabbath at home in exercises and studies suited to its proper business: your next neighbour stays from church, to spend the seventh day less religiously than he passed any of the six, in a sleepy, stupid rest, or at some rendezvous of drunkenness and debauchery, and yet thinks that he is only imitating you, because you both agree in not going to church. The same consideration should over-rule many small scruples concerning the rigorous propriety of some things,

which may be contained in the forms, or admitted into the administration of the public worship of our communion: for, it seems impossible that even "two or three should be "gathered together" in any act of social worship, if each one require from the rest an implicit submission to his objections, and if no man will attend upon a religious service which in any point contradicts his opinion of truth, or falls short of his ideas of perfection.

Beside the direct necessity of public worship to the greater part of every Christian community (supposing worship at all to be a Christian duty), there are other valuable advantages growing out of the use of religious assemblies, without being designed in the institution, or thought of by the individuals who compose them.

1. Joining in prayer and praises to their common Creator and Governor, has a sensible tendency to unite mankind together, and to cherish and enlarge the generous affections.

So many pathetic reflections are awakened by every exercise of social devotion, that most men, I believe, carry away from public worship a better temper towards the rest of

mankind, than they brought with them. Sprung from the same extraction, preparing together for the period of all worldly distinctions, reminded of their mutual infirmities and common dependency, imploring and receiving support and supplies from the same great source of power and bounty, having all one interest to secure, one Lord to serve, one judgement, the supreme object to all of their hopes and fears, to look towards; it is hardly possible, in this position, to behold mankind as strangers, competitors, or enemies; or not to regard them as children of the same family, assembled before their common parent, and with some portion of the tenderness which belongs to the most endearing of our domestic relations. It is not to be expected, that any single effect of this kind should be considerable or lasting; but the frequent return of such sentiments as the presence of a devout congregation naturally suggests, will gradually melt down the ruggedness of many unkind passions, and may generate in time a permanent and productive benevolence.

2. Assemblies for the purpose of divine worship, placing men under impressions by which they are taught to consider their re-

lation to the Deity, and to contemplate those around them with a view to that relation, force upon their thoughts the natural equality of the human species, and thereby promote humility and condescension in the highest orders of the community, and inspire the lowest with a sense of their rights. The distinctions of civil life are almost always insisted upon too much, and urged too far. Whatever, therefore, conduces to restore the level, by qualifying the dispositions which grow out of great elevation or depression of rank, improves the character on both sides. Now things are made to appear little, by being placed beside what is great. In which manner, superiorities, that occupy the whole field of imagination, will vanish or shrink to their proper diminutiveness, when compared with the distance by which even the highest of men are removed from the Supreme Being, and this comparison is naturally introduced by all acts of joint worship. If ever the poor man holds up his head, it is at church: if ever the rich man views him with respect, it is there: and both will be the better, and the public profited, the oftener they meet in a situation, in which the consciousness of dignity in the one is tempered and mitigated, and the

spirit of the other erected and confirmed. We recommend nothing adverse to subordinations which are established and necessary: but then it should be remembered, that subordination itself is an evil, being an evil to the subordinate, who are the majority, and therefore ought not to be carried a tittle beyond what the greater good, the peaceable government of the community, requires.

The public worship of Christians is a duty of Divine appointment. "Where two or "three," says Christ, "are gathered together "in my name, there am I in the midst of "them*." This invitation will want nothing of the force of a command with those who respect the person and authority from which it proceeds. Again, in the epistle to the Hebrews; "not forsaking the assembling of "ourselves together, as the manner of some "is:" which reproof seems as applicable to the desertion of our public worship at this day, as to the forsaking the religious assemblies of Christians in the age of the Apostle. Independently of these passages of Scripture, a disciple of Christianity will hardly think himself at liberty to dispute a practice set on

* Matt. xviii. 20. Heb. x. 25.

foot by the inspired preachers of his religion, coeval with its institution, and retained by every sect into which it has been since divided.

CHAPTER V.

OF FORMS OF PRAYER IN PUBLIC WORSHIP.

LITURGIES, or preconcerted forms of public devotion, being neither enjoined in Scripture, nor forbidden, there can be no good reason for either receiving or rejecting them, but that of expediency; which expediency is to be gathered from a comparison of the advantages and disadvantages attending upon this mode of worship, with those which usually accompany extemporary prayer.

The advantages of a liturgy are these:

I. That it prevents absurd, extravagant, or impious addresses to God, which, in an order of men so numerous as the sacerdotal, the folly and enthusiasm of many must always be in danger of producing, where the conduct of the public worship is intrusted,

without restraint or assistance, to the discretion and abilities of the officiating minister.

II. That it prevents the *confusion* of extemporary prayer, in which the congregation being ignorant of each petition before they hear it, and having little or no time to join in it after they have heard it, are confounded between their attention to the minister, and to their own devotion. The devotion of the hearer is necessarily suspended, until a petition be concluded; and before he can assent to it, or properly adopt it, that is, before he can address the same request to God for himself, and from himself, his attention is called off to keep pace with what succeeds. Add to this, that the mind of the hearer is held in continual expectation, and detained from its proper business, by the very novelty with which it is gratified. A congregation may be pleased and affected with the prayers and devotion of their minister, without joining in them; in like manner as an audience oftentimes are with the representation of devotion upon the stage, who, nevertheless, come away without being conscious of having exercised any act of devotion themselves. *Joint* prayer, which amongst all denominations of Christians is the declared design of "coming

"together," is prayer in which all *join*; and not that which one alone in the congregation conceives and delivers, and of which the rest are merely hearers. This objection seems fundamental, and holds even where the minister's office is discharged with every possible advantage and accomplishment. The labouring recollection, and embarrassed or tumultuous delivery, of many extemporè speakers, form an additional objection to this mode of public worship: for these imperfections are very general, and give great pain to the serious part of a congregation, as well as afford a profane diversion to the levity of the other part.

These advantages of a liturgy are connected with two principal inconveniences; first, that forms of prayer composed in one age become unfit for another, by the unavoidable change of language, circumstances, and opinions; secondly, that the perpetual repetition of the same form of words produces weariness and inattentiveness in the congregation. However, both these inconveniences are in their nature invincible. Occasional revisions of a liturgy may obviate the first, and devotion will supply a remedy for the second: or they may both subsist in a con-

siderable degree, and yet be outweighed by the objections which are inseparable from extemporary prayer.

The Lord's Prayer is a precedent, as well as a pattern, for forms of prayer. Our Lord appears, if not to have prescribed, at least to have authorised the use of fixed forms, when he complied with the request of the disciple who said unto him, "Lord, teach us to "pray, as John also taught his disciples." Luke, xi. 1.

The properties required in a public liturgy are, that it be compendious; that it express just conceptions of the Divine Attributes; that it recite such wants as a congregation are likely to feel, and no other; and that it contain as few controverted propositions as possible.

I. That it be compendious.

It were no difficult task to contract the liturgies of most churches into half their present compass, and yet detain every distinct petition, as well as the substance of every sentiment, which can be found in them. But brevity may be studied too much. The composer of a liturgy must not sit down to his work with the hope, that the devotion of the congregation will be uniformly sustained

throughout, or that every part will be attended to by every hearer. If this could be depended upon, a very short service would be sufficient for every purpose that can be answered or designed by social worship: but seeing the attention of most men is apt to wander and return at intervals, and by starts, he will admit a certain degree of amplification and repetition, of diversity of expression upon the same subject, and variety of phrase and form with little addition to the sense, to the end that the attention, which has been slumbering or absent during one part of the service, may be excited and recalled by another; and the assembly kept together until it may reasonably be presumed, that the most heedless and inadvertent have performed some act of devotion, and the most desultory attention being caught by some part or other of the public service. On the other hand, the too great length of church-services is more unfavourable to piety, than almost any fault of composition can be. It begets, in many, an early and unconquerable dislike to the public worship of their country or communion. They come to church seldom; and enter the doors, when they do come, under the apprehension of a tedious attendance,

which they prepare for at first, or soon after relieve, by composing themselves to a drowsy forgetfulness of the place and duty, or by sending abroad their thoughts in search of more amusing occupation. Although there may be some few of a disposition not to be wearied with religious exercises: yet, where a ritual is prolix, and the celebration of divine service long, no effect is in general to be looked for, but that indolence will find in it an excuse, and piety be disconcerted by impatience.

The length and repetitions complained of in our liturgy, are not so much the fault of the compilers, as the effect of uniting into *one* service what was originally, but with very little regard to the conveniency of the people, distributed into *three*. Notwithstanding that dread of innovations in religion, which seems to have become the *panic* of the age, few, I should suppose, would be displeased with such omissions, abridgements, or change in the arrangement, as the combination of separate services must necessarily require, even supposing each to have been faultless in itself. If, together with these alterations, the Epistles and Gospels, and Collects which precede them, were composed

and selected with more regard to unity of subject and design; and the Psalms and Lessons either left to the choice of the minister, or better accommodated to the capacity of the audience, and the edification of modern life; the church of England would be in possession of a liturgy, in which those who assent to her doctrines would have little to blame, and the most dissatisfied must acknowledge many beauties. The style throughout is excellent; calm, without coldness; and, though every where sedate, oftentimes affecting. The pauses in the service are disposed at proper intervals. The transitions from one office of devotion to another, from confession to prayer, from prayer to thanksgiving, from thanksgiving to "hearing of the word," are contrived like scenes in the drama, to supply the mind with a succession of diversified engagements. As much variety is introduced also in the form of praying, as this kind of composition seems capable of admitting. The prayer at one time is continued; at another, broken by responses, or cast into short alternate ejaculations; and sometimes the congregation is called upon to take its share in the service, by being left to complete a sentence which

the minister had begun. The enumeration of human wants and sufferings in the Litany, is almost complete. A Christian petitioner can have few things to ask of God, or to deprecate, which he will not find there expressed, and for the most part with inimitable tenderness and simplicity.

II. That it express just conceptions of the Divine Attributes.

This is an article in which no care can be too great. The popular notions of God are formed, in a great measure, from the accounts which the people receive of his nature and character in their religious assemblies. An error here, becomes the error of multitudes: and as it is a subject in which almost every opinion leads the way to some practical consequence, the purity or depravation of public manners will be affected, amongst other causes, by the truth or corruption of the public forms of worship.

III. That it recite such wants as the congregation are likely to feel; and no other.

Of forms of prayer, which offend not egregiously against truth and decency, that has the most merit, which is best calculated to keep alive the devotion of the assembly. It were to be wished, therefore, that every

part of a liturgy were personally applicable to every individual in the congregation; and that nothing were introduced to interrupt the passion, or damp the flame, which it is not easy to rekindle. Upon this principle, the *state prayers* in our liturgy should be fewer and shorter. Whatever may be pretended, the congregation do not feel that concern in the subject of these prayers, which must be felt, or ever prayers be made to God with earnestness. The *state style* likewise seems unseasonably introduced into these prayers, as ill according with that annihilation of human greatness, of which every act that carries the mind to God, presents the idea.

IV. That it contain as few controverted propositions as possible.

We allow to each church the truth of its peculiar tenets, and all the importance which zeal can ascribe to them. We dispute not here the right or the expediency of framing creeds, or of imposing subscriptions. But why should every position which a church maintains, be woven with so much industry into her forms of public worship? Some are offended, and some are excluded; this is an evil of itself, at least to *them*: and what ad-

vantage or satisfaction can be derived to the *rest*, from the separation of their brethren, it is difficult to imagine; unless it were a duty to publish our system of polemic divinity, under the name of making confession of our faith, every time we worship God; or a sin to agree in religious exercises with those from whom we differ in some religious opinions. Indeed, where one man thinks it his duty constantly to worship a being, whom another cannot, with the assent of his conscience, permit himself to worship at all, there seems to be no place for comprehension, or any expedient left, but a quiet secession. All other differences may be compromised by silence. If sects and schisms be an evil, they are as much to be avoided by one side as the other. If sectaries are blamed for taking unnecessary offence, established churches are no less culpable for unnecessarily giving it: they are bound at least to produce a command, or a reason of equivalent utility, for shutting out any from their communion, by mixing with divine worship doctrines which, whether true or false, are unconnected in their nature with devotion.

CHAPTER VI.

OF THE USE OF SABBATICAL INSTITUTIONS.

An assembly cannot be collected, unless the time of assembling be fixed and known beforehand: and if the design of the assembly require that it be holden frequently, it is easiest that it should return at stated intervals. This produces a necessity of appropriating set seasons to the social offices of religion. It is also highly convenient that the *same* seasons be observed throughout the country, that all may be employed, or all at leisure together; for if the recess from worldly occupations be not general, one man's business will perpetually interfere with another man's devotion; the buyer will be calling at the shop when the seller is gone to church. This part, therefore, of the religious distinction of seasons; namely, a general intermission of labour and business during times previously set apart for the exercise of public worship, is founded in the reasons which make public worship itself a duty. But the celebration of divine service never occupies the whole day. What remains, therefore, of Sunday, beside

the part of it employed at church, must be considered as a mere rest from the ordinary occupations of civil life: and he who would defend the institution, as it is required by law to be observed in Christian countries, unless he can produce a command for a *Christian sabbath*, must point out the uses of it in that view.

First, then, that interval of relaxation which Sunday affords to the laborious part of mankind, contributes greatly to the comfort and satisfaction of their lives, both as it refreshes them for the time, and as it relieves their six days' labour by the prospect of a day of rest always approaching; which could not be said of *casual* indulgences of leisure and rest, even were they more frequent than there is reason to expect they would be, if left to the discretion or humanity of interested task-makers. To this difference it may be added, that holidays, which come seldom and unexpected, are unprovided, when they do come, with any duty or employment; and the manner of spending them being regulated by no public decency or established usage, they are commonly consumed in rude, if not criminal pastimes, in stupid sloth, or brutish intemperance. Whoever considers how much sabbatical in-

stitutions conduce, in this respect, to the happiness and civilisation of the labouring classes of mankind, and reflects how great a majority of the human species these classes compose, will acknowledge the utility, whatever he may believe of the origin, of this distinction; and will consequently perceive it to be every man's duty to uphold the observation of Sunday when once established, let the establishment have proceeded from whom or from what authority it will.

Nor is there any thing lost to the community by the intermission of public industry one day in the week. For, in countries tolerably advanced in population and the arts of civil life, there is always enough of human labour, and to spare. The difficulty is not so much to procure, as to employ it. The addition of the seventh day's labour to that of the other six, would have no other effect than to reduce the price. The labourer himself, who deserved and suffered most by the change, would gain nothing.

2. Sunday, by suspending many public diversions, and the ordinary rotation of employment, leaves to men of all ranks and professions sufficient leisure, and not more than what is sufficient, both for the external offices

of Christianity, and the retired, but equally necessary duties of religious meditation and inquiry. It is true, that many do not convert their leisure to this purpose; but it is of moment, and is all which a public constitution can effect, that to every one be allowed the opportunity.

3. They, whose humanity embraces the whole sensitive creation, will esteem it no inconsiderable recommendation of a weekly return of public rest, that it affords a respite to the toil of brutes. Nor can we omit to recount this among the uses which the Divine Founder of the *Jewish* sabbath expressly appointed a law of the institution.

We admit, that none of these reasons show why Sunday should be preferred to any other day in the week, or one day in seven to one day in six, or eight: but these points, which in their nature are of arbitrary determination, being established to our hands, our obligation applies to the subsisting establishment, so long as we confess that some such institution is necessary, and are neither able, nor attempt to substitute any other in its place.

CHAPTER VII.

OF THE SCRIPTURE ACCOUNT OF SABBATICAL INSTITUTIONS.

THE subject, so far as it makes any part of Christian morality, is contained in two questions:

I. Whether the command, by which the Jewish sabbath was instituted, extends to Christians?

II. Whether any new command was delivered by Christ; or any other day substituted in the place of the Jewish sabbath by the authority or example of his apostles?

In treating of the first question, it will be necessary to collect the accounts which are preserved of the institution in the Jewish history: for, the seeing these accounts together, and in one point of view, will be the best preparation for the discussing or judging of any arguments on one side or the other.

In the second chapter of Genesis, the historian, having concluded his account of the six days' creation, proceeds thus: "And "on the seventh day God ended his work "which he had made; and he rested on "the seventh day from all his work which he

"had made: and God *blessed* the seventh "day and *sanctified* it, because that in it he "had rested from all his work which God "created and made." After this, we hear no more of the sabbath, or of the seventh day, as in any manner distinguished from the other six, until the history brings us down to the sojourning of the Jews in the wilderness, when the following remarkable passage occurs. Upon the complaint of the people for want of food, God was pleased to provide for their relief by a miraculous supply of manna, which was found every morning upon the ground about the camp; "and they gathered it "every morning, every man according to his "eating; and when the sun waxed hot, it "melted: and it came to pass, that on the "sixth day they gathered twice as much "bread, two omers for one man: and all the "rulers of the congregation came and told "Moses: and he said unto them, This is "that which the Lord had said, *To-morrow is* "*the rest of the holy sabbath unto the Lord;* "bake that which ye will bake, to-day, and "seethe that ye will seethe; and that which "remaineth over, lay up for you, to be kept "until the morning. And they laid it up "till the morning, as Moses bade; and it

" did not stink [as it had done before, when " some of them left it till the morning], nei- " ther was there any worm therein. And " Moses said, Eat that to-day: *for, to-day* " *is a sabbath unto the Lord;* to-day ye shall " not find it in the field. Six days ye shall " gather it, but on the seventh day, which " is the sabbath, in it there shall be none. " And it came to pass, that there went out " some of the people on the seventh day for " to gather, and they found none. And the " Lord said unto Moses, How long refuse ye " to keep my commandments and my laws? " See, for *that the Lord hath given you the* " *sabbath*, therefore he giveth you on the " sixth day the bread of two days: abide ye " every man in his place; let no man go out " of his place on the seventh day. So the " people rested on the seventh day." Exodus, xvi.

Not long after this, the sabbath, as is well known, was established with great solemnity, in the fourth commandment.

Now, in my opinion, the transaction in the wilderness above recited, was the first actual institution of the sabbath. For, if the sabbath had been instituted at the time of the creation, as the words in Genesis may

seem at first sight to import; and if it had been observed all along from that time to the departure of the Jews out of Egypt, a period of about two thousand five hundred years; it appears unaccountable that no mention of it, no occasion of even the obscurest allusion to it, should occur, either in the general history of the world before the call of Abraham, which contains, we admit, only a few memoirs of its early ages, and those extremely abridged; or, which is more to be wondered at, in that of the lives of the first three Jewish patriarchs, which, in many parts of the account, is sufficiently circumstantial and domestic. Nor is there, in the passage above quoted from the sixteenth chapter of Exodus, any intimation that the sabbath, when appointed to be observed, was only the revival of an ancient institution, which had been neglected, forgotten, or suspended; nor is any such neglect imputed either to the inhabitants of the old world, or to any part of the family of Noah; nor, lastly, is any permission recorded to dispense with the institution during the captivity of the Jews in Egypt, or on any other public emergency.

The passage in the second chapter of Genesis, which creates the whole controversy

upon the subject, is not inconsistent with this opinion: for, as the seventh day was erected into a sabbath, on account of God's resting upon that day from the work of the creation, it was natural enough in the historian, when he had related the history of the creation, and of God's ceasing from it on the seventh day, to add: "And God blessed the seventh day, "and sanctified it, because that on it he had "rested from all his work which God created "and made;" although the blessing and sanctification, *i. e.* the religious distinction and appropriation of that day, were not actually made till many ages afterwards. The words do not assert, that God *then* "blessed" and "sanctified" the seventh day, but that he blessed and sanctified it *for that reason*: and if any ask, why the sabbath, or sanctification of the seventh day, was *then* mentioned, if it was not *then* appointed, the answer is at hand; the order of connexion, and not of time, introduced the mention of the sabbath, in the history of the subject which it was ordained to commemorate.

This interpretation is strongly supported by a passage in the prophet Ezekiel, where the sabbath is plainly spoken of as *given*;

and what else can that mean, but as *first instituted*, in the wilderness? "Wherefore "I caused them to go forth out of the land "of Egypt, and brought them into the wil- "derness: and I give them my statutes and "shewed them my judgements, which if a "man do, he shall even live in them: more- "over also I *gave them my sabbaths*, to be "a sign between me and them, that they "might know that I am the Lord that sanc- "tify them." Ezek. xx. 10, 11, 12.

Nehemiah also recounts the promulgation of the sabbatic law amongst the transactions in the wilderness; which supplies another considerable argument in aid of our opinion: —"Moreover thou leddest them in the day "by a cloudy pillar, and in the night by a "pillar of fire, to give them light in the way "wherein they should go. Thou camest "down also upon mount Sinai, and spakest "with them from heaven, and gavest them "right judgements and true laws, good "statutes and commandments, *and madest "known unto them thy holy sabbath*, and "commandedst them precepts, statutes, and "laws, by the hand of Moses thy servant, "and gavest them bread from heaven for

" their hunger, and broughtest forth water " for them out of the rock*." Nehem. ix. 12.

If it be inquired what duties were appointed for the Jewish sabbath, and under what penalties and in what manner it was observed amongst the ancient Jews; we find that by the fourth commandment, a strict cessation from work was enjoined, not only upon Jews by birth, or religious profession, but upon all who resided within the limits of the Jewish state; that the same was to be permitted to their slaves and their cattle; that this rest was not to be violated, under pain of death: " Whosoever doeth any work " in the sabbath-day, he shall surely be put " to death:" Exod. xxxi. 15. Beside which, the seventh day was to be solemnised by double sacrifices in the temple:—" And on " the sabbath-day, *two* lambs of the first " year without spot, and two tenth deals of

* From the mention of the sabbath in so close a connexion with the descent of God upon mount Sinai, and the delivery of the law from thence, one would be inclined to believe, that Nehemiah referred solely to the fourth commandment. But the fourth commandment certainly did not first make known the sabbath. And it is apparent, that Nehemiah observed not the order of events, for he speaks of what passed upon mount Sinai before he mentions the miraculous supplies of bread and water, though the Jews did not arrive at mount Sinai till some time after both these miracles were wrought.

" flour for a meat-offering, mingled with oil, " and the drink-offering thereof; this is the " burnt-offering of every sabbath, beside the " continual burnt-offering and his drink-" offering." Numb. xxviii. 9, 10. Also *holy convocations*, which mean, we presume, assemblies for the purpose of public worship or religious instruction, were directed to be holden on the sabbath-day; " the seventh day " is a sabbath of rest, an holy convocation." Levit. xxiii. 3.

And accordingly we read, that the sabbath was in fact observed amongst the Jews by a scrupulous abstinence from every thing which, by any possible construction, could be deemed labour; as from dressing meat, from travelling beyond a sabbath-day's journey, or about a single mile. In the Maccabean wars, they suffered a thousand of their number to be slain, rather than do any thing in their own defence on the sabbath-day. In the final siege of Jerusalem, after they had so far overcome their scruples as to defend their persons when attacked, they refused any operation on the sabbath-day, by which they might have interrupted the enemy in filling up the trench. After the establishment of synagogues (of the origin of which we have

no account), it was the custom to assemble in them on the sabbath-day, for the purpose of hearing the law rehearsed and explained, and for the exercise, it is probable, of public devotion: "For, Moses of old time hath in "every city them that preach him, *being read* "*in the synagogues every sabbath-day.*" The seventh day is *Saturday*; and, agreeably to the Jewish way of computing the day, the sabbath held from six o'clock on the Friday evening, to six o'clock on Saturday evening. —These observations being premised, we approach the main question, Whether the command by which the Jewish sabbath was instituted, extend to us?

If the Divine command was actually delivered at the creation, it was addressed, no doubt, to the whole human species alike, and continues, unless repealed by some subsequent revelation, binding upon all who come to the knowledge of it. If the command was published for the first time in the wilderness, then it was immediately directed to the Jewish people alone; and something further, either in the subject, or circumstances of the command, will be necessary to show, that it was designed for any other. It is on this account, that the question concerning the date of the

institution was first to be considered. The former opinion precludes all debate about the extent of the obligation; the latter admits, and, *primâ facie*, induces a belief, that the sabbath ought to be considered as part of the peculiar law of the Jewish policy.

Which belief receives great confirmation from the following arguments:

The sabbath is described as a sign between God and the people of Israel:—"Wherefore "the children of Israel shall keep the sabbath, "to observe the sabbath throughout their "generations for a perpetual covenant; *it is* "*a sign between me and the children of* "*Israel for ever.*" Exodus xxxi. 16, 17. Again: "And I gave them my statutes, and "showed them my judgements, which if a "man do he shall even live in them; *more-* "*over also I gave them my sabbaths, to be a* "*sign between me and them*, that they might "know that I am the Lord that sanctify "them." Ezek. xx. 12.——Now it does not seem easy to understand how the sabbath could be a *sign* between God and the people of Israel, unless the observance of it was peculiar to that people, and designed to be so.

The distinction of the sabbath is, in its nature, as much a positive ceremonial insti-

tution, as that of many other seasons which were appointed by the Levitical law to be kept holy, and to be observed by a strict rest; as the first and seventh days of unleavened bread; the feast of Pentecost; the feast of Tabernacles: and in the twenty-third chapter of Exodus, the sabbath and these are recited together.

If the command by which the sabbath was instituted, be binding upon Christians, it must be binding as to the day, the duties, and the penalty; in none of which it is received.

The observance of the sabbath was not one of the articles enjoined by the Apostles, in the fifteenth chapter of Acts, upon them "which, from among the Gentiles, were "turned unto God."

St. Paul evidently appears to have considered the sabbath as part of the Jewish ritual, and not obligatory upon Christians as such:—"Let no man therefore judge you in "meat or in drink, or in respect of an holy "day, or of the new moon, or *of the sabbath* "*days*, which are a shadow of things to "come, but the body is of Christ." Col. ii. 16, 17.

I am aware of only two objections which

can be opposed to the force of these arguments: one is, that the reason assigned in the fourth commandment for hallowing the seventh day, namely, "because God rested "on the seventh day from the work of the "creation," is a reason which pertains to all mankind; the other, that the command which enjoins the observance of the sabbath is inserted in the Decalogue, of which all the other precepts and prohibitions are of moral and universal obligation.

Upon the first objection it may be remarked, that although in Exodus the commandment is founded upon God's rest from the creation, in Deuteronomy the commandment is repeated with a reference to a different event:—"Six days shalt thou labour, and do "all thy work; but the seventh day is the "sabbath of the Lord thy God; in it thou "shalt not do any work; thou, nor thy son, "nor thy daughter, nor thy man-servant, "nor thy maid-servant, nor thine ox, nor "thine ass, nor any of thy cattle, nor the "stranger that is within thy gates; that thy "man-servant and thy maid-servant may "rest as well as thou: and remember that "thou wast a servant in the land of Egypt, "and that the Lord thy God brought thee

"out thence, through a mighty hand, and "by a stretched-out arm; *therefore* the "Lord thy God commanded thee to keep "the sabbath day." It is farther observable, that God's rest from the creation is proposed as the reason of the institution, even where the institution itself is spoken of as peculiar to the Jews:—"Wherefore the "children of Israel shall keep the sabbath, "to observe the sabbath throughout their "generations, for a perpetual covenant: it is "a sign between me and the children of Is-"rael for ever: *for*, in six days the Lord "made heaven and earth, and on the seventh "day he rested and was refreshed." The truth is, these different reasons were assigned, to account for different circumstances in the command. If a Jew inquired, why the *seventh day* was sanctified rather than the sixth or eighth, his law told him, because God rested on the *seventh day* from the creation. If he asked, why was the same rest indulged to *slaves?* his law bade him remember, that he also was a *slave* in the land of Egypt, and "that the Lord his God brought him out "thence." In this view, the two reasons are perfectly compatible with each other, and with a third end of the institution, its being

a *sign* between God and the people of Israel; but in this view they determine nothing concerning the extent of the obligation. If the reason by its proper energy had constituted a natural obligation, or if it had been mentioned with a view to the extent of the obligation, we should submit to the conclusion, that all were comprehended by the command who are concerned in the reason. But the sabbatic rest being a duty which results from the ordination and authority of a positive law, the reason can be alleged no farther than as it explains the design of the legislator: and if it appear to be recited with an intentional application to one part of the law, it explains his design upon no other; if it be mentioned merely to account for the choice of the day, it does not explain his design as to the extent of the obligation.

With respect to the second objection, that inasmuch as the other nine commandments are confessedly of moral and universal obligation, it may reasonably be presumed that this is of the same; we answer, that this argument will have less weight, when it is considered that the distinction between positive and natural duties, like other distinctions of modern ethics, was unknown to the

simplicity of ancient language; and that there are various passages in Scripture, in which duties of a political, or ceremonial, or positive nature, and confessedly of partial obligation, are enumerated, and without any mark of discrimination, along with others which are natural and universal. Of this the following is an incontestable example: "But "if a man be just, and do that which is law- "ful and right; and hath not eaten upon "the mountains, nor hath lifted up his eyes "to the idols of the house of Israel; neither "hath defiled his neighbour's wife, *neither* "*hath come near to a menstruous woman;* "and hath not oppressed any, but hath re- "stored to the debtor his pledge: hath "spoiled none by violence; hath given his "bread to the hungry, and hath covered the "naked with a garment; *he that hath not* "*given upon usury, neither hath taken any* "*increase;* that hath withdrawn his hand "from iniquity; hath executed true judge- "ment between man and man; hath walked "in my statutes, and hath kept my judge- "ments, to deal truly; he is just, he shall "surely live, saith the Lord God." Ezekiel xviii. 5—9. The same thing may be observed of the apostolic decree recorded in

the fifteenth chapter of the Acts:—"It "seemed good to the Holy Ghost, and to "us, to lay upon you no greater burthen "than these necessary things, that ye ab- "stain from meats offered to idols, and from "blood, and from things strangled, and *from* "*fornication*: from which if ye keep your- "selves, ye shall do well."

II. If the law by which the sabbath was instituted, was a law only to the Jews, it becomes an important question with the Christian inquirer, whether the founder of his religion delivered any new command upon the subject; or, if that should not appear to be the case, whether any day was appropriated to the service of religion by the authority or example of his Apostles.

The practice of holding religious assemblies upon the first day of the week, was so early and universal in the Christian Church, that it carries with it considerable proof of having originated from some precept of Christ, or of his Apostles, though none such be now extant. It was upon the *first* day of the week that the disciples were assembled, when Christ appeared to them for the first time after his resurrection; "then the "same day at evening, *being the first day of*

" *the week*, when the doors were shut where " the disciples were assembled, for fear of " the Jews, came Jesus, and stood in the " midst of them." John xx. 19. This, for any thing that appears in the account, might, as to the day, have been accidental; but in the 26th verse of the same chapter we read, " that after eight days," that is, on the *first day* of the week *following*, " *again* the dis- " ciples were within;" which second meeting upon the same day of the week looks like an appointment and design to meet on that particular day. In the twentieth chapter of the Acts of the Apostles, we find the same custom in a Christian Church at a great distance from Jerusalem:—" And we came " unto them to Troas in five days, where we " abode seven days; and *upon the first day* " *of the week, when the disciples came to-* " *gether to break bread*, Paul preached unto " them." Acts xx. 6. 7. The manner in which the historian mentions the disciples coming together to break bread on the *first day* of the week, shows, I think, that the practice by this time was familiar and established. St. Paul to the Corinthians writes thus: " Concerning the collection for the " saints, as I have given order to the

" Churches of Galatia, even so do ye; *upon* " *the first day of the week* let every one of " you lay by him in store as God hath pro- " spered him, that there be no gathering when " I come." 1 Cor. xvi. 1, 2. Which direction affords a probable proof, that the *first* day of the week was already, amongst the Christians both of Corinth and Galatia distinguished from the rest by some religious application or other. At the time that St. John wrote the book of his Revelation, the first day of the week had obtained the name of the *Lord's Day*;—" I was in the spirit" says he " *on the Lord's Day.*" Rev. i. 10. Which name, and St. John's use of it, sufficiently denote the appropriation of this day to the service of religion, and that this appropriation was perfectly known to the Churches of Asia. I make no doubt but that by the *Lord's Day* was meant the *first* day of the week: for, we find no footsteps of any distinction of days, which could entitle any other to that appellation. The subsequent history of Christianity corresponds with the accounts delivered on this subject in Scripture.

It will be remembered, that we are contending, by these proofs, for no other duty

upon the first day of the week, than that of holding and frequenting religious assemblies. A cessation upon that day from labour, beyond the time of attendance upon public worship, is not intimated in any passage of the New Testament; nor did Christ or his Apostles deliver, that we know of, any command to their disciples for a discontinuance, upon that day, of the common offices of their professions: a reserve which none will see reason to wonder at, or to blame as a defect in the institution, who consider that, in the primitive condition of Christianity, the observance of a new sabbath would have been useless, or inconvenient, or impracticable. During Christ's personal ministry, his religion was preached to the Jews alone. *They* already had a sabbath, which, as citizens and subjects of that œconomy, they were obliged to keep; and did keep. It was not therefore probable that Christ would enjoin another day of rest in conjunction with this. When the new religion came forth into the Gentile world, converts to it were, for the most part, made from those classes of society who have not their time and labour at their own disposal; and it was scarcely to be expected, that unbelieving masters and magistrates, and they

who directed the employment of others, would permit their slaves and labourers to rest from their work every seventh day; or that civil government, indeed, would have submitted to the loss of a seventh part of the public industry, and that too in addition to the numerous festivals which the national religions indulged to the people; at least, this wouldhave been an encumbrance, which might have greatly retarded the reception of Christianity in the world. In reality, the institution of a weekly sabbath is so connected with the functions of civil life, and requires so much of the concurrence of civil law, in its regulation and support, that it cannot, perhaps, properly be made the ordinance of any religion, till that religion be received as the religion of the state.

The opinion, that Christ and his Apostles meant to retain the duties of the Jewish sabbath, shifting only the day from the seventh to the first, seems to prevail without sufficient proof; nor does any evidence remain in Scripture (of what, however, is not improbable), that the first day of the week was thus distinguished in commemoration of our Lord's resurrection.

The conclusion from the whole inquiry

(for, it is our business to follow the arguments, to whatever probability they conduct us) is this: The *assembling* upon the first day of the week for the purpose of public worship and religious instruction, is a law of Christianity, of Divine appointment; the *resting* on that day from our employments longer than we are detained from them by attendance upon these assemblies, is to Christians an ordinance of human institution; binding nevertheless upon the conscience of of every individual of a country in which a weekly sabbath is established, for the sake of the beneficial purposes which the public and regular observance of it promotes, and recommended perhaps in some degree to the Divine approbation, by the resemblance it bears to what God was pleased to make a solemn part of the law which he delivered to the people of Israel, and by its subserviency to many of the same uses.

CHAPTER VIII.

BY WHAT ACTS AND OMISSIONS THE DUTY OF THE CHRISTIAN SABBATH IS VIOLATED.

SINCE the obligation upon Christians to comply with the religious observance of Sunday, arises from the public uses of the institution, and the authority of the apostlic practice, the *manner* of observing it ought to be that which best fulfils *these* uses, and conforms the nearest to *this* practice.

The uses proposed by the institution are; —1. To facilitate attendance upon public worship.

2. To meliorate the condition of the laborious classes of mankind, by regular and seasonable returns of rest.

3. By a general suspension of business and amusement, to invite and enable persons of every description to apply their time and thoughts to subjects appertaining to their salvation.

With the primitive Christians, the peculiar, and probably for some time the only, distinction of the first day of the week, was

the holding of religious assemblies upon that day. We learn, however, from the testimony of a very early writer amongst them, that they also reserved the day for religious meditations;—*Unusquisque nostrùm* (saith *Irenæus*) *sabbatizat spiritualitèr, meditatione legis gaudens, opificium Dei admirans.*

WHEREFORE the duty of the day is violated,

1st, By all such employments or engagements as (though differing from our ordinary occupation) hinder our attendance upon public worship, or take up so much of our time as not to leave a sufficient part of the day at leisure for religious reflection; as the going of journeys, the paying or receiving of visits which engage the whole day, or employing the time at home in writing letters, settling accounts, or in applying ourselves to studies, or the reading of books, which bear no relation to the business of religion.

2dly, By unnecessary encroachments on the rest and liberty which Sunday ought to bring to the inferior orders of the community; as by keeping servants on that day confined and busied in preparations for the superfluous elegancies of our table, or dress.

3dly, By such recreations as are cu-to-

marily forborne out of respect to the day: as hunting, shooting, fishing, public diversions, frequenting taverns, playing at cards, or dice.

If it be asked, as it often has been, wherein consists the difference between walking out with your staff, or with your gun? between spending the evening at home, or in a tavern? between passing the Sunday afternoon at a game of cards, or in conversation not more edifying, nor always so inoffensive?—To these, and to the same question under a variety of forms, and in a multitude of similar examples, we return the following answer:—That the religious observance of Sunday, if it ought to be retained at all, must be upholden by some public and visible distinctions: that, draw the line of distinction where you will, many actions which are situated on the confines of the line, will differ very little, and yet lie on the opposite sides of it:—that every trespass upon that reserve which public decency has established, breaks down the fence by which the day is separated to the service of religion:—that it is unsafe to trifle with scruples and habits that have a beneficial tendency, although founded merely in custom:—that these li-

berties, however intended, will certainly be considered by those who observe them, not only as disrespectful to the day and institution, but as proceeding from a secret contempt of the Christian faith:—that, consequently, they diminish a reverence for religion in others, so far as the authority of our opinion, or the efficacy of our example, reaches; or rather, so far as either will serve for an excuse of negligence to those who are glad of any:—that as to cards and dice, which put in their claim to be considered among the *harmless* occupations of a vacant hour, it may be observed that few find any difficulty in refraining from *play* on Sunday, except they who sit down to it with the views and eagerness of gamesters:—that *gaming* is seldom innocent:—that the anxiety and perturbations, however, which it excites, are inconsistent with the tranquillity and frame of temper in which the duties and thoughts of religion should always both find and leave us: and lastly we shall remark, that the example of other countries, where the same or greater licence is *allowed*, affords no apology for irregularities in our own; because a practice which is tolerated by public usage, neither receives the same construction, nor gives the

same offence, as where it is censured and prohibited.

CHAPTER XI.

OF REVERENCING THE DEITY.

In many persons, a seriousness, and sense of awe, overspread the imagination, whenever the idea of the Supreme Being is presented to their thoughts. This effect, which forms a considerable security against vice, is the consequence not so much of reflection, as of habit; which habit being generated by the external expressions of reverence which we use ourselves, or observe in others, may be destroyed by causes opposite to these, and especially by that familiar levity with which some learn to speak of the Deity, of his attributes, providence, revelations, or worship.

God hath been pleased (no matter for what reason, although probably for this) to forbid the vain mention of his name:—"Thou shalt "not take the name of the Lord thy God in "vain." Now the mention is *vain*, when it is useless: and it is useless, when it is neither

likely nor intended to serve any good purpose; as when it flows from the lips idle and unmeaning, or is applied, on occasions inconsistent with any consideration of religion and devotion, to express our anger, our earnestness, our courage, or our mirth; or indeed when it is used at all, except in acts of religion, or in serious and seasonable discourse upon religious subjects.

The prohibition of the third commandment, is recognised by Christ, in his sermon upon the Mount; which sermon adverts to none but the moral parts of the Jewish law: "I say unto you, Swear not at all: but let "your communication be yea, yea; nay, "nay: for, whatsoever is more than these, "cometh of evil." The Jews probably interpreted the prohibition as restrained to the name JEHOVAH, the name which the Deity had appointed and appropriated to himself; Exod. vi. 3. The words of Christ extend the prohibition beyond the *name* of God, to every thing associated with the idea:— "Swear not, neither by heaven, for it is "God's throne; nor by the earth, for it is "his footstool; neither by Jerusalem, for it "is the city of the Great King." Matt. v. 35.

The offence of profane swearing is aggravated by the consideration, that in *it* duty and decency are sacrificed to the slenderest of temptations. Suppose the habit, either from affectation, or by negligence and inadvertency, to be already formed, it must always remain within the power of the most ordinary resolution to correct it; and it cannot, one would think, cost a great deal to relinquish the pleasure and honour which it confers. A concern for duty is in fact never strong, when the exertion requisite to vanquish a habit founded in no antecedent propensity, is thought too much, or too painful.

A contempt of positive duties, or rather of those duties for which the reason is not so plain as the command, indicates a disposition upon which the authority of Revelation has obtained little influence.—This remark is applicable to the offence of profane swearing, and describes, perhaps, pretty exactly, the general character of those who are most addicted to it.

Mockery and ridicule, when exercised upon the Scriptures, or even upon the places, persons, and forms set apart for the ministration of religion, fall within the meaning of the law which forbids the profanation of

God's name; especially as that law is extended by Christ's interpretation. They are moreover inconsistent with a religious frame of mind: for, as no one ever either feels himself disposed to pleasantry, or capable of being diverted with the pleasantry of others, upon matters in which he is deeply interested; so a mind intent upon the acquisition of heaven, rejects with indignation every attempt to entertain it with jests, calculated to degrade or deride subjects, which it never recollects but with seriousness and anxiety. Nothing but stupidity, or the most frivolous dissipation of thought, can make even the inconsiderate forget the supreme importance of every thing which relates to the expectation of a future existence. Whilst the infidel mocks at the superstitions of the vulgar, insults over their credulous fears, their childish errors, or fantastic rites, it does not occur to him to observe, that the most preposterous device by which the weakest devotee ever believed he was securing the happiness of a future life, is more rational than unconcern about it. Upon this subject, nothing is so absurd as indifference;—no folly so contemptible, as thoughtlessness and levity.

Finally; the knowledge of what is due to

the solemnity of those interests, concerning which Revelation professes to inform and direct us, may teach even those who are least inclined to respect the prejudices of mankind, to observe a decorum in the style and conduct of religious disquisitions, with the neglect of which many adversaries of Christianity are justly chargeable. Serious arguments are fair on all sides. Christianity is but ill defended by refusing audience or toleration to the objections of unbelievers. But whilst we would have freedom of inquiry restrained by no laws, but those of decency, we are entitled to demand, on behalf of a religion which holds forth to mankind assurances of immortality, that its credit be assailed by no other weapons than those of sober discussion and legitimate reasoning:— that the truth or falsehood of Christianity be never made a topic of raillery, a theme for the exercise of wit or eloquence, or a subject of contention for literary fame and victory:— that the cause be tried upon its merits:— that all applications to the fancy, passions, or prejudices of the reader, all attempts to pre-occupy, ensnare, or perplex his judgement, by any art, influence, or impression whatsoever, extrinsic to the proper grounds

and evidence upon which his assent ought to proceed, be rejected from a question, which involves in its determination, the hopes, the virtue, and the repose of millions:—that the controversy be managed on both sides with sincerity; that is, that nothing be produced, in the writings of either, contrary to, or beyond, the writer's own knowledge and persuasion:—that objections and difficulties be proposed, from no other motive than an honest and serious desire to obtain satisfaction, or to communicate information, which may promote the discovery and progress of truth:—that in conformity with this design, every thing be stated with integrity, with method, precision, and simplicity; and, above all, that whatever is published in opposition to received and confessedly beneficial persuasions, be set forth under a form which is likely to invite inquiry, and to meet examination. If with these moderate and equitable conditions be compared the manner in which hostilities have been waged against the Christian religion, not only the votaries of the prevailing faith, but every man who looks forward with anxiety to the destination of his being, will see much to blame and to complain of. By *one unbeliever*, all the follies

which have adhered, in a long course of dark and superstitious ages, to the popular creed, are assumed as so many doctrines of Christ and his Apostles, for the purpose of subverting the whole system by the absurdities which it is *thus* represented to contain. By *another*, the ignorance and vices of the sacerdotal order, their mutual dissensions and persecutions, their usurpations and encroachments upon the intellectual liberty and civil rights of mankind, have been displayed with no small triumph and invective; not so much to guard the Christian laity against a repetition of the same injuries (which is the only proper use to be made of the most flagrant examples of the past), as to prepare the way for an insinuation, that the religion itself is nothing but a profitable fable, imposed upon the fears and credulity of the multitude, and upheld by the frauds and influence of an interested and crafty priesthood. And yet, how remotely is the character of the clergy connected with the truth of Christianity! What, after all, do the most disgraceful pages of ecclesiastical history prove, but that the passions of our common nature are not altered or excluded by distinctions of name, and that the characters of men are formed much

more by the temptations than the duties of their profession? A *third* finds delight in collecting and repeating accounts of wars and massacres, of tumults and insurrections, excited in almost every age of the Christian æra by religious zeal; as though the vices of Christians were parts of Christianity; intolerance and extirpation precepts of the Gospel; or as if its spirit could be judged of from the counsels of princes, the intrigues of statesmen, the pretences of malice and ambition, or the unauthorised cruelties of some gloomy and virulent superstition. By a *fourth*, the succession and variety of popular religions; the vicissitudes with which sects and tenets have flourished and decayed; the zeal with which they were once supported, the negligence with which they are now remembered; the little share which reason and argument appear to have had in framing the creed, or regulating the religious conduct of the multitude; the indifference and submission with which the religion of the state is generally received by the common people; the caprice and vehemence with which it is sometimes opposed; the phrensy with which men have been brought to contend for opinions and ceremonies, of which they knew neither the

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proof, the meaning, nor the original; lastly, the equal and undoubting confidence with which we hear the doctrines of Christ or of Confucius, the law of Moses or of Mahomet, the Bible, the Koran, or the Shaster, maintained or anathematised, taught or abjured, revered or derided, according as we live on this or on that side of a river; keep within or step over the boundaries of a state; or even in the same country, and by the same people, so often as the event of a battle, or the issue of a negociation, delivers them to the dominion of a new master;—points, I say, of this sort are exhibited to the public attention, as so many arguments against the *truth* of the Christian religion;—and with success. For these topics being brought together, and set off with some aggravation of circumstances, and with a vivacity of style and description familiar enough to the writings and conversation of free-thinkers, insensibly lead the imagination into a habit of classing Christianity with the delusions that have taken possession, by turns, of the public belief: and of regarding it, as what the scoffers of our faith represent it to be, *the superstition of the day*. But is this to deal honestly by the subject, or with the world?

May not the same things be said, may not the same prejudices be excited by these representations, whether Christianity be true or false, or by whatever proofs its truth be attested? May not truth as well as falsehood be taken upon credit? May not a religion be founded upon evidence accessible and satisfactory to every mind competent to the inquiry, which yet, by the greatest part of its professors, is received upon authority?

But if the *matter* of those objections be reprehensible, as calculated to produce an effect upon the reader beyond what their real weight and place in the argument deserve, still more shall we discover of management and disingenuousness in the *form* under which they are dispersed among the public. Infidelity is served up in every shape that is likely to allure, surprise, or beguile the imagination; in a fable, a tale, a novel, a poem; in interspersed and broken hints; remote and oblique surmises; in books of travels, of philosophy, of natural history; in a word, in any form rather than the right one, that of a professed and regular disquisition. And because the coarse buffoonery, and broad laugh, of the old and rude adversaries of the Christian faith, would offend the taste, perhaps,

rather than the virtue, of this cultivated age, a graver irony, a more skilful and delicate banter, is substituted in their place. An eloquent historian, beside his more direct, and therefore fairer, attacks upon the credibility of Evangelic story, has contrived to weave into his narration one continued sneer upon the cause of Christianity, and upon the writings and characters of its ancient patrons. The knowledge which this author possesses of the frame and conduct of the human mind, must have led him to observe, that such attacks do their execution without inquiry. Who can refute a *sneer?* Who can compute the number, much less one by one, scrutinize the justice, of those disparaging insinuations, which crowd the pages of this elaborate history? What reader suspends his curiosity, or calls off his attention from the principal narrative, to examine references, to search into the foundation, or to weigh the reason, propriety, and force of every transient sarcasm, and sly allusion, by which the Christian testimony is depreciated and traduced; and by which, nevertheless, he may find his persuasion afterwards unsettled and perplexed?

But the enemies of Christianity have

pursued her with poisoned arrows. Obscenity itself is made the vehicle of infidelity. The aweful doctrines, if we be not permitted to call them the sacred truths of our religion, together with all the adjuncts and appendages of its worship and external profession, have been sometimes impudently profaned by an unnatural conjunction with impure and lascivious images. The fondness for ridicule is almost universal; and ridicule to many minds is never so irresistible, as when seasoned with obscenity, and employed upon religion. But in proportion as these noxious principles take hold of the imagination, they infatuate the judgement: for, trains of ludicrous and unchaste associations adhering to every sentiment and mention of religion, render the mind indisposed to receive either conviction from its evidence, or impressions from its authority. And this effect being exerted upon the sensitive part of our frame, is altogether independent of argument, proof, or reason; is as formidable to a true religion, as to a false one; to a well-grounded faith, as to a chimercial mythology, or fabulous tradition. Neither, let it be observed, is the crime or danger less, because impure ideas

are exhibited under a veil, in covert and chastised language.

Seriousness is not constraint of thought; nor levity, freedom. Every mind which wishes the advancement of truth and knowledge, in the most important of all human researches, must abhor this licentiousness, as violating no less the laws of reasoning, than the rights of decency. There is but one description of men, to whose principles it ought to be tolerable; I mean that class of reasoners who can see *little* in Christianity, even supposing it to be true. To such adversaries we address this reflection.—Had Jesus Christ delivered no other declaration than the following—"The hour is coming, in "the which all that are in the grave shall "hear his voice, and shall come forth: they "that have done good, unto the resurrection "of life; and they that have done evil, unto "the resurrection of damnation;"—he had pronounced a message of inestimable importance, and well worthy of that splendid apparatus of prophecy and miracles with which his mission was introduced, and attested; a message, in which the wisest of mankind would rejoice to find an answer to their doubts,

and rest to their inquiries. It is idle to say, that a future state had been discovered already:—it had been discovered, as the Copernican system was;—it was one guess among many. He alone discovers, who *proves:* and no man can prove this point, but the teacher who testifies by miracles that his doctrine comes from God.

MORAL PHILOSOPHY.

BOOK VI.

ELEMENTS OF POLITICAL KNOWLEDGE.

CHAPTER I.

OF THE ORIGIN OF CIVIL GOVERNMENT.

GOVERNMENT, at first, was either patriarchal or military: *that* of a parent over his family, or of a commander over his fellow-warriors.

I. Paternal authority, and the order of domestic life, supplied the foundation of *civil government*. Did mankind spring out of the earth mature and independent, it would be found perhaps impossible to introduce subjection and subordination among them: but the condition of human infancy prepares men for society, by combining individuals into

small communities, and by placing them from the beginning, under direction and control. A family contains the rudiments of an empire. The authority of one over many, and the disposition to govern and to be governed, are in this way incidental to the very nature, and coeval no doubt with the existence, of the human species.

Moreover, the constitution of families not only assists the formation of civil government, by the dispositions which it generates, but also furnishes the first steps of the process by which empires have been actually reared. A parent would retain a considerable part of his authority after his children were grown up, and had formed families of their own. The obedience of which they remembered not the beginning, would be considered as natural; and would scarcely, during the parent's life, be entirely or abruptly withdrawn. Here then we see the second stage in the progress of dominion. The first was, that of a parent over his young children; this, that of an ancestor presiding over his adult descendants.

Although the original progenitor was the centre of union to his posterity, yet it is not probable that the association would be im-

mediately or altogether dissolved by his death. Connected by habits of intercourse and affection, and by some common rights, necessities, and interests, they would consider themselves as allied to each other in a nearer degree than to the rest of the species. Almost all would be sensible of an inclination to continue in the society in which they had been brought up; and experiencing, as they soon would do, many inconveniences from the absence of that authority, which their common ancestor exercised, especially in deciding their disputes, and directing their operations in matters in which it was necessary to act in conjunction, they might be induced to supply his place by a formal choice of a successor; or rather might willingly, and almost imperceptibly, transfer their obedience to some one of the family, who by his age or services, or by the part he possessed in the direction of their affairs during the lifetime of the parent, had already taught them to respect his advice, or to attend to his commands; or, lastly, the prospect of these inconveniences might prompt the first ancestor to appoint a successor; and his posterity, from the same motive, united with an habitual deference to the ancestor's authority,

might receive the appointment with submission. Here then we have a tribe or clan incorporated under one chief. Such communities might be increased by considerable numbers, and fulfil the purposes of civil union without any other or more regular convention, constitution, or form of government, that what we have described. Every branch which was slipped off from the primitive stock, and removed to a distance from it, would in like manner take root, and grow into a separate clan. Two or three of these clans were frequently, we may suppose, united into one. Marriage, conquest, mutual defence, common distress, or more accidental coalitions, might produce this effect.

II. A second source of personal authority, and which might easily extend, or sometimes perhaps supersede, the patriarchal, is that which results from military arrangement. In wars, either of aggression or defence, manifest necessity would prompt those who fought on the same side to array themselves under one leader. And although their *leader* was advanced to this eminence for the purpose only, and during the operations of a single expedition, yet his authority would not always terminate with the reasons for which it

was conferred. A warrior who had led forth his tribe against their enemies with repeated success, would procure to himself, even in the deliberations of peace, a powerful and permanent influence. If this advantage were added to the authority of the patriarchal chief, or favoured by any previous distinction of ancestry, it would be no difficult undertaking for the person who possessed it to obtain the almost absolute direction of the affairs of the community; especially if he was careful to associate to himself proper auxiliaries, and content to practice the obvious art of gratifying or removing those who opposed his pretensions.

But although we may be able to comprehend how by his personal abilities or fortune one man may obtain the rule over many, yet it seems more difficult to explain how empire became *hereditary*, or in what manner sovereign power, which is never acquired without great merit or management, learns to descend in a succession which has no dependence upon any qualities either of understanding or activity. The causes which have introduced hereditary dominion into so general a reception in the world, are principally the following:—the influence of association,

which communicates to the son a portion of the same respect which was wont to be paid to the virtues or station of the father; the mutual jealousy of other competitors; the greater envy with which all behold the exaltation of an equal, than the continuance of an acknowledged superiority; a reigning prince leaving behind him many adherents, who can preserve their own importance only by supporting the succession of his children: add to these reasons, that elections to the supreme power having, upon trial, produced destructive contentions, many states would take a refuge from a return of the same calamities in a rule of succession; and no rule presents itself so obvious, certain, and intelligible, as consanguinity of birth.

The ancient state of society in most countries, and the modern condition of some uncivilised parts of the world, exhibit that appearance which this account of the origin of civil government would lead us to expect. The earliest histories of Palestine, Greece, Italy, Gaul, Britain, inform us, that these countries were occupied by many small independent nations, not much perhaps unlike those which are found at present amongst the savage inhabitants of North America, and

upon the coast of Africa. These nations I consider as the amplifications of so many single families; or as derived from the junction of two or three families, whom society in war, or the approach of some common danger, had united. Suppose a country to have been first peopled by shipwreck on its coasts, or by emigrants or exiles from a neighbouring country; the new settlers, having no enemy to provide against, and occupied with the care of their personal subsistence, would think little of digesting a system of laws, of contriving a form of government, or indeed of any political union whatever; but each settler would remain at the head of his own family, and each family would include all of every age and generation who were descended from him. So many of these families as were holden together after the death of the original ancestor, by the reasons and in the method above recited, would wax, as the individuals were multiplied, into tribes, clans, hordes, or nations, similar to those into which the ancient inhabitants of many countries are known to have been divided, and which are still found wherever the state of society and manners is immature and uncultivated.

Nor need we be surprised at the early ex-

istence in the world of some vast empires, or at the rapidity with which they advanced to their greatness, from comparatively small and obscure originals. Whilst the inhabitants of so many countries were broken into numerous communities, unconnected, and oftentimes contending with each other; before experience had taught these little states to see their own danger in their neighbour's ruin; or had instructed them in the necessity of resisting the aggrandisement of an aspiring power, by alliances, and timely preparations; in this condition of civil policy, a particular tribe, which by any means had gotten the start of the rest in strength or discipline, and happened to fall under the conduct of an ambitious chief, by directing their first attempts to the part where success was most secure, and by assuming, as they went along, those whom they conquered into a share of their future enterprises, might soon gather a force which would infallibly overbear any opposition that the scattered power and unprovided state of such enemies could make to the progress of their victories.

Lastly, our theory affords a presumption, that the earliest governments were monarchies, because the government of families,

and of armies, from which, according to our account, civil government derived its institution, and probably its form, is universally monarchical.

CHAPTER II.

HOW SUBJECTION TO CIVIL GOVERNMENT IS MAINTAINED.

COULD we view our own species from a distance, or regard mankind with the same sort of observation with which we read the natural history, or remark the *manners*, of any other animal, there is nothing in the human character which would more surprise us, than the almost universal subjugation of strength to weakness;—than to see many millions of robust men, in the complete use and exercise of their personal faculties, and without any defect of courage, waiting upon the will of a child, a woman, a driveller, or a lunatic. And although, when we suppose a vast empire in absolute subjection to one person, and that one depressed beneath the level of his species by infirmities, or vice, we suppose perhaps an extreme case: yet in all cases, even in the most popular forms of civil

government, *the physical strength resides in the governed.* In what manner opinion thus prevails over strength, or how power, which naturally belongs to superior force, is maintained in opposition to it; in other words, by what motives the many are induced to submit to the few, becomes an inquiry which lies at the root of almost every political speculation. It removes, indeed, but does not resolve, the difficulty, to say that civil governments are now-a-days almost universally upholden by standing armies; for, the question still returns; How are these armies themselves kept in subjection, or made to obey the commands, and carry on the designs, of the prince or state which employs them?

Now, although we should look in vain for any *single* reason which will account for the general submission of mankind to civil government; yet it may not be difficult to assign for every class and character in the community, considerations powerful enough to dissuade each from any attempts to resist established authority. Every man has his motive, though not the same. In this, as in other instances, the conduct is similar, but

the principles which produce it, extremely various.

There are three distinctions of character, into which the subjects of a state may be divided: into those who obey from prejudice; those who obey from reason; and those who obey from self-interest.

I. They who obey from prejudice, are determined by an opinion of right in their governors; which opinion is founded upon *prescription*. In monarchies and aristocracies which are hereditary, the prescription operates in favour of particular families; in republics and elective offices, in favour of particular forms of government, or constitutions. Nor is it to be wondered at, that mankind should reverence authority founded in prescription, when they observe that it is prescription which confers the title to almost every thing else. The whole course, and all the habits of civil life, favour this prejudice. Upon what other foundation stands any man's right to his estate? The right of primogeniture, the succession of kindred, the descent of property, the inheritance of honours, the demand of tithes, tolls, rents, or services, from the estates of others, the right of way,

the powers of office and magistracy, the privileges of nobility, the immunities of the clergy, upon what are they all founded, in the apprehension at least of the multitude, but upon prescription? To what else, when the claims are contested, is the appeal made? It is natural to transfer the same principle to the affairs of government, and to regard those exertions of power, which have been long exercised and acquiesced in, as so many *rights* in the sovereign; and to consider obedience to his commands, within certain accustomed limits, as enjoined by that rule of conscience, which requires us to render to every man his due.

In hereditary monarchies, the *prescriptive title* is corroborated, and its influence considerably augmented by an accession of religious sentiments, and by that sacredness which men are wont to ascribe to the persons of princes. Princes themselves have not failed to take advantage of this disposition, by claiming a superior dignity, as it were, of nature, or a peculiar delegation from the Supreme Being. For this purpose were introduced the titles of Sacred Majesty, of God's Anointed, Representative, Vicegerent, together with the ceremonies of investitures and coro-

nations, which are calculated not so much to recognise the authority of sovereigns, as to consecrate their persons. Where a fabulous religion permitted it, the public veneration has been challenged by bolder pretensions. The Roman emperors usurped the titles and arrogated the worship of gods. The mythology of the heroic ages, and of many barbarous nations, was easily converted to this purpose. Some princes, like the heroes of Homer, and the founder of the Roman name, derived their birth from the gods; others, with Numa, pretended a secret communication with some divine being; and others, again, like the incas of Peru, and the ancient Saxon kings, extracted their descent from the deities of their country. The Lama of Thibet, at this day, is held forth to his subjects, not as the offspring or successor of a divine race of princes, but as the immortal God himself, the object at once of civil obedience and religious adoration. This instance is singular, and may be accounted the farthest point to which the abuse of human credulity has ever been carried. But in all these instances the purpose was the same,—to engage the reverence of mankind, by an application to their religious principles.

The reader will be careful to observe that, in this article, we denominate every opinion, whether true or false, a *prejudice*, which is not founded upon argument, in the mind of the person who entertains it.

II. They who obey from *reason*, that is to say, from conscience as instructed by reasonings and conclusions of their own, are determined by the consideration of the necessity of some government or other; the certain mischief of civil commotions; and the danger of re-settling the government of their country better, or at all, if once subverted or disturbed.

III. They who obey from *self-interest*, are kept in order by want of leisure; by a succession of private cares, pleasures, and engagements; by contentment, or a sense of the ease, plenty, and safety, which they enjoy; or lastly, and principally, by fear, foreseeing that they would bring themselves by resistance into a worse situation than their present, inasmuch as the strength of government, each discontented subject reflects, is greater than his own, and he knows not that others would join him.

This last consideration has often been called *opinion of power*.

This account of the principles by which mankind are retained in their obedience to civil government, may suggest the following cautions:

1. Let civil governors learn hence to respect their subjects; let them be admonished, that *the physical strength resides in the governed;* that this strength wants only to be felt and roused, to lay prostrate the most ancient and confirmed dominion; that civil authority is founded in opinion; that general opinion therefore ought always to be treated with deference, and managed with delicacy and circumspection.

2. *Opinion of right*, always following *the custom*, being for the most part founded in nothing else, and lending one principal support to government, every innovation in the constitution, or, in other words, in the custom of governing, diminishes the stability of government. Hence some absurdities are to be retained, and many small inconveniences endured in every country, rather than that the usage should be violated, or the course of public affairs diverted from their old and smooth channel. Even *names* are not indifferent. When the multitude are to be dealt with, there is a *charm* in sounds. It was

upon this principle, that several statesmen of those times advised Cromwell to assume the title of king, together with the ancient style and insignia of royalty. The minds of many, they contended, would be brought to acquiesce in the authority of a king, who suspected the office, and were offended with the administration, of a protector. Novelty reminded them of usurpation. The adversaries of this design opposed the measure, from the same persuasion of the efficacy of names and forms, jealous lest the veneration paid to these, should add an influence to the new settlement which might ensnare the liberty of the commonwealth.

3. *Government may be too secure.* The greatest tyrants have been those, whose titles were the most unquestioned. Whenever therefore the opinion of right becomes too predominant and superstitious, it is abated by *breaking the custom.* Thus the Revolution broke the *custom of succession*, and thereby moderated, both in the prince and in the people, those lofty notions of hereditary right, which in the one were become a continual incentive to tyranny, and disposed the other to invite servitude, by undue compliances and dangerous concessions.

4. As ignorance of union, and want of communication, appear amongst the principal preservatives of civil authority, it behoves every state to keep its subjects in this want and ignorance, not only by vigilance in guarding against actual confederacies and combinations, but by a timely care to prevent great collections of men of any separate party of religion, or of like occupation or profession, or in any way connected by a participation of interest or passion, from being assembled in the same vicinity. A protestant establishment in this country may have little to fear from its popish subjects, scattered as they are throughout the kingdom, and intermixed with the Protestant inhabitants, which yet might think them a formidable body, if they were gathered together into one country. The most frequent and desperate riots are those which break out amongst men of the same profession, as weavers, miners, sailors. This circumstance makes a mutiny of soldiers more to be dreaded than any other insurrection. Hence also one danger of an overgrown metropolis, and of those great cities and crowded districts, into which the inhabitants of trading countries are commonly collected. The worst ef-

fect of popular tumults consists in this, that they discover to the insurgents the secret of their own strength, teach them to depend upon it against a future occasion, and both produce and diffuse sentiments of confidence in one another, and assurances of mutual support. Leagues thus formed and strengthened, may overawe or overset the power of any state; and the danger is greater, in proportion as, from the propinquity of habitation and intercourse of employment, the passions and counsels of a party can be circulated with ease and rapidity. It is by these means, and in such situations, that the minds of men are so affected and prepared, that the most dreadful uproars often arise from the slightest provocations.—When the train is laid, a spark will produce the explosion.

CHAPTER III.

THE DUTY OF SUBMISSION TO CIVIL GOVERNMENT EXPLAINED.

THE subject of this chapter is sufficiently distinguished from the subject of the last, as the motives which actually produce civil obedience, may be, and often are, very different from the reasons which make that obedience a duty.

In order to prove civil obedience to be a moral duty, and an obligation upon the conscience, it hath been usual with many political writers (at the head of whom we find the venerable name of Locke), to state a compact between the citizen and the state, as the ground and cause of the relation between them; which compact, binding the parties for the same general reason that private contracts do, resolves the duty of submission to civil government into the universal obligation of fidelity in the performance of promises. This compact is twofold:

First, An *express* compact by the primitive founders of the state, who are supposed to have convened for the declared purpose of

settling the terms of their political union, and a future constitution of government. The whole body is supposed, in the first place, to have unanimously consented to be bound by the resolutions of the majority; that majority, in the next place, to have fixed certain fundamental regulations; and then to have constituted, either in one person, or in an assembly (the rule of succession, or appointment, being at the same time determined), a *standing legislature*, to whom, under these pre-established restrictions, the government of the state was thenceforward committed, and whose laws the several members of the convention were, by their first undertaking, thus personally engaged to obey.—This transaction is sometimes called the *social compact*, and these supposed original regulations compose what are meant by the *constitution*, the *fundamental laws of the constitution*; and form, on one side, the *inherent, indefeasible prerogative of the crown*; and, on the other, the unalienable, inprescriptible *birthright* of the subject.

Secondly, A *tacit* or *implied* compact, by all succeeding members of the state, who, by accepting its protection, consent to be bound by its laws; in like manner, as who-

ever *voluntarily enters* into a private society is understood, without any other or more explicit stipulation, to promise a conformity with the rules and obedience to the government of that society, as the known conditions upon which he is admitted to a participation of its privileges.

This account of the subject, although specious, and patronised by names the most respectable, appears to labour under the following objections: that it is founded upon a supposition false in fact, and leading to dangerous conclusions.

No social compact, similar to what is here described, was ever made or entered into in reality; no such original convention of the people was ever actually holden, or in any country could be holden, antecedent to the existence of civil government in that country. It is to suppose it possible to call savages out of caves and deserts, to deliberate and vote upon topics, which the experience, and studies, and refinements, of civil life, alone suggest. Therefore no government in the universe *began* from this original. Some imitation of a social compact may have taken place at a *revolution*. The present age has been witness to a transaction, which bears

the nearest resemblance to this political idea, of any of which history has preserved the account or memory: I refer to the establishment of the United States of North America. We saw the *people* assembled to elect deputies, for the avowed purpose of framing the constitution of a new empire. We saw this deputation of the people deliberating and resolving upon a form of government, erecting a permanent legislature, distributing the functions of sovereignty, establishing and promulgating a code of fundamental ordinances, which were to be considered by succeeding generations, not merely as laws and acts of the state, but as the very terms and conditions of the confederation; as binding not only upon the subjects and magistrates of the state, but as limitations of power, which were to control and regulate the future legislature. Yet even here much was presupposed. In settling the constitution, many important parts were presumed to be already settled. The qualifications of the constituents who were admitted to vote in the election of members of congress, as well as the mode of electing the representatives, were taken from the old forms of government. That was wanting, from which every

social union should set off, and which alone makes the resolutions of the society the act of the individual,—the unconstrained consent of all to be bound by the decision of the majority; and yet, without this previous consent, the revolt, and the regulations which followed it, were compulsory upon dissentients.

But the original compact, we are told, is not proposed as a *fact*, but as a fiction, which furnishes a commodious explication of the mutual rights and duties of sovereigns and subjects. In answer to this representation of the matter, we observe, that the original compact, if it be not a fact, is nothing; can confer no actual authority upon laws or magistrates; nor afford any foundation to rights, which are supposed to be real and existing. But the truth is, that in the books, and in the apprehension, of those who deduce our civil rights and obligations *à pactis*, the original convention is appealed to and treated of as a reality. Whenever the disciples of this system speak of the constitution; of the fundamental articles of the constitution; of laws being constitutional or unconstitutional; of inherent, unalienable, inextinguishable rights, either in the prince, or in the

people; or indeed of any laws, usages, or civil rights, as transcending the authority of the subsisting legislature, or possessing a force and sanction superior to what belong to the modern acts and edicts of the legislature, they secretly refer us to what passed at the original convention. They would teach us to believe, that certain rules and ordinances were established by the people, at the same time that they settled the charter of government, and the powers as well as the form of the future legislature; that this legislature consequently, deriving its commission and existence from the consent and act of the primitive assembly (of which indeed it is only the standing deputation), continues subject, in the exercise of its offices, and as to the extent of its power, to the rules, reservations, and limitations which the same assembly then made and prescribed to it.

"As the first members of the state were "bound by express stipulation to obey the "government which they had erected; so "the succeeding inhabitants of the same "country are understood to promise allegiance to the constitution and government "they find established, by accepting its protection, claiming its privileges, and ac-

" quiescing in its laws; more especially, by " the purchase or inheritance of lands, to the " possession of which, allegiance to the state " is annexed, as the very service and condi- " tion of the tenure." Smoothly as this train of argument proceeds, little of it will endure examination. The native subjects of modern states are not conscious of any stipulation with the sovereigns, of ever exercising an election whether they will be bound or not by the acts of the legislature, of any alternative being proposed to their choice, of a promise either required or given; nor do they apprehend that the validity or authority of the laws depends at all upon *their* recognition or consent. In all stipulations, whether they be expressed or implied, private or public, formal or constructive, the parties stipulating must both possess the liberty of assent and refusal, and also be conscious of this liberty; which cannot with truth be affirmed of the subjects of civil government, as government is now, or ever was, actually administered. This is a defect, which no arguments can excuse or supply: all presumptions of consent, without this consciousness, or in opposition to it, are vain and erroneous. Still less is it possible to reconcile with any

idea of stipulation the practice, in which all European nations agree, of founding allegiance upon the circumstance of nativity, that is, of claiming and treating as subjects all those who are born within the confines of their dominions, although removed to another country in their youth or infancy. In this instance certainly, the state does not presume a compact. Also if the subject be bound only by his own consent, and if the voluntary abiding in the country be the proof and intimation of that consent, by what arguments should we defend the right, which sovereigns universally assume, of prohibiting, when they please, the departure of their subjects out of the realm?

Again, when it is contended that the taking and holding possession of land amounts to an acknowledgement of the sovereign, and a virtual promise of allegiance to his laws, it is necessary to the validity of the argument to prove, that the inhabitants, who first composed and constituted the state, collectively possessed a right to the soil of the country; —a right to parcel it out to whom they pleased, and to annex to the donation what conditions they thought fit. How came they by this right? An agreement amongst them-

selves would not confer it; that could only adjust what already belonged to them. A society of men vote themselves to be the owners of a region of the world:—does that vote, unaccompanied especially with any culture, inclosure, or proper act of occupation, make it theirs? does it entitle them to exclude others from it, or to dictate the conditions upon which it shall be enjoyed? Yet this original collective right and ownership is the foundation for all the reasoning by which the duty of allegiance is inferred from the possession of land.

The theory of government which affirms the existence and the obligation of a social compact, would, after all, merit little discussion, and, however groundless and unnecessary, should receive no opposition from us, did it not appear to lead to conclusions unfavourable to the improvement, and to the peace, of human society.

1st. Upon the supposition that government was first erected by, and that it derives all its just authority from resolutions entered into by a convention of the people, it is capable of being presumed, that many points were settled by that convention, anterior to the establishment of the subsisting legislature,

and which the legislature, consequently, has no right to alter, or interfere with. These points are called the *fundamentals* of the constitution: and as it is impossible to determine how many, or what they are, the suggesting of any such serves extremely to embarrass the deliberations of the legislature, and affords a dangerous pretence for disputing the authority of the laws. It was this sort of reasoning (so far as reasoning of any kind was employed in the question) that produced in this nation the doubt, which so much agitated the minds of men in the reign of the second Charles, whether an Act of Parliament could of right alter or limit the succession of the Crown.

2dly. If it be by virtue of a compact, that the subject owes obedience to civil government, it will follow that he ought to abide by the form of government which he finds established, be it ever so absurd or inconvenient. He is bound by his bargain. It is not permitted to any man to retreat from his engagement, merely because he finds the performance disadvantageous, or because he has an opportunity of entering into a better. This law of contracts is universal: and to

call the relation between the sovereign and the subjects a contract, yet not to apply to it the rules, or allow of the effects of a contract, is an arbitrary use of names, and an unsteadiness in reasoning, which can teach nothing. Resistance to the *encroachments* of the supreme magistrate may be justified upon this principle; recourse to arms, for the purpose of bringing about an amendment of the constitution, never can. No form of government contains a provision for its own dissolution; and few governors will consent to the extinction, or even to any abridgement, of their own power. It does not therefore appear, how despotic governments can ever, in consistency with the obligation of the subject, be changed or mitigated. Despotism is the constitution of many states: and whilst a despotic prince exacts from his subjects the most rigorous servitude, according to this account, he is only holding them to their agreement. A people may vindicate, by force, the rights which the constitution has left them: but every attempt to narrow the prerogative of the crown, by *new* limitations, and in opposition to the will of the reigning prince, whatever opportunities may invite, or

success follow it, must be condemned as an infraction of the compact between the sovereign and the subject.

3dly. Every violation of the compact on the part of the governor, releases the subject from his allegiance, and dissolves the government. I do not perceive how we can avoid this consequence, if we found the duty of allegiance upon compact, and confess any analogy between the social compact and other contracts. In private contracts, the violation and non-performance of the conditions, by one of the parties, vacates the obligation of the other. Now the terms and articles of the social compact being no where extant or expressed; the rights and offices of the administrator of an empire being so many and various; the imaginary and controverted line of his prerogative being so liable to be overstepped in one part or other of it; the position, that every such transgression amounts to a forfeiture of the government, and consequently authorises the people to withdraw their obedience, and provide for themselves by a new settlement, would endanger the stability of every political fabric in the world, and has in fact always supplied the disaffected with a topic of seditious declamation. If

occasions have arisen, in which this plea has been resorted to with justice and success, they have been occasions in which a revolution was defensible upon other and plainer principles. The plea itself is at all times captious and unsafe.

Wherefore, rejecting the intervention of a compact, as unfounded in its principle, and dangerous in the application, we assign for the only ground of the subject's obligation, THE WILL OF GOD AS COLLECTED FROM EXPEDIENCY.

The steps by which the argument proceeds, are few and direct.—"It is the will "of God that the happiness of human life "be promoted:"—this is the first step, and the foundation not only of this, but of every moral conclusion. "Civil society conduces "to that end:"—this is the second proposition. "Civil societies cannot be upholden, "unless in each, the interest of the whole "society be binding upon every part and "member of it:"—this is the third step, and conducts us to the conclusion, namely, "that so long as the interest of the whole

"society requires it, that is, so long as the "established government cannot be resisted "or changed without public inconveniency, "it is the will of God (which *will* universally "determines our duty) that the established "government be obeyed,"—and no longer.

This principle being admitted, the justice of every particular case of resistance is reduced to a computation of the quantity of the danger and grievance on the one side, and of the probability and expense of redressing it on the other.

But who shall judge this? We answer, "Every man for himself." In contentions between the sovereign and the subject, the parties acknowledge no common arbitrator: and it would be absurd to refer the decision to *those* whose conduct has provoked the question, and whose own interest, authority, and fate, are immediately concerned in it. The danger of error and abuse is no objection to the rule of expediency, because every other rule is liable to the same or greater: and every rule that can be propounded upon the subject (like all rules indeed which appeal to, or bind, the conscience) must in the application depend upon private judgement. It may be observed, however, that it ought

equally to be accounted the exercise of a man's own private judgement, whether he be determined by reasonings and conclusions of his own, or submit to be directed by the advice of others, provided he be free to choose his guide.

We proceed to point out some easy but important inferences, which result from the substitution of *public expediency* into the place of all implied compacts, promises, or conventions whatsoever.

I. It may be as much a duty, at one time, to resist government, as it is, at another, to obey it; to wit, whenever more advantage will, in our opinion, accrue to the community, from resistance, than mischief.

II. The lawfulness of resistance, or the lawfulness of a revolt, does not depend alone upon the grievance which is sustained or feared, but also upon the probable expense and event of the contest. They who concerted the Revolution in England, were justifiable in their counsels, because, from the apparent disposition of the nation, and the strength and character of the parties engaged, the measure was likely to be brought about with little mischief or bloodshed; whereas it might have been a question with many

friends of their country, whether the injuries then endured and threatened would have authorised the renewal of a doubtful civil war.

III. Irregularity in the first foundation of a state, or subsequent violence, fraud, or injustice in getting possession of the supreme power, are not sufficient reasons for resistance, after the government is once peaceably settled. No subject of the British empire conceives himself engaged to vindicate the justice of the Norman claim or conquest, or apprehends that his duty in any manner depends upon that controversy. So, likewise, if the house of Lancaster, or even the posterity of Cromwell, had been at this day seated upon the throne of England, we should have been as little concerned to inquire how the founder of the family came there. No civil contests are so futile, although none have been so furious and sanguinary, as those which are excited by a disputed succession.

IV. Not every invasion of the subject's rights, or liberty, or of the constitution; not every breach of promise, or of oath; not every stretch of prerogative, abuse of power, or neglect of duty by the chief magistrate, or by the whole or any branch of the legislative body, justifies resistance, unless these

crimes draw after them public consequences of sufficient magnitude to outweigh the evils of civil disturbance. Nevertheless, every violation of the constitution ought to be watched with jealousy, and resented as *such*, beyond what the quantity of estimable damage would require or warrant; because a known and settled usage of governing affords the only security against the enormities of uncontrolled dominion, and because this security is weakened by every encroachment which is made without opposition, or opposed without effect.

V. No usage, law, or authority whatever, is so binding, that it need or ought to be continued, when it may be changed with advantage to the community. The family of the prince, the order of succession, the prerogative of the crown, the form and parts of the legislature, together with the respective powers, office, duration, and mutual dependency of the several parts, are all only so many *laws*, mutable like other laws, whenever expediency requires, either by the ordinary act of the legislature, or, if the occasion deserve it, by the interposition of the people. These points are wont to be approached with a kind of awe; they are represented to the mind as

principles of the constitution settled by our ancestors, and, being settled, to be no more committed to innovation or debate; as foundations never to be stirred; as the terms and conditions of the social compact, to which every citizen of the state has engaged his fidelity, by virtue of a promise which he cannot now recall. Such reasons have no place in our system: to us, if there be any good reason for treating these with more deference and respect than other laws, it is, either the advantage of the present constitution of government (which reason must be of different force in different countries), or because in all countries it is of importance, that the form and usage of governing be acknowledged and understood, as well by the governors as by the governed, and because, the seldomer it is changed, the more perfectly it will be known by both sides.

VI. As all civil obligation is resolved into expediency, what, it may be asked, is the difference between the obligation of an Englishman and a Frenchman? or why, since the obligation of both appears to be founded in the same reason, is a Frenchman bound in conscience to bear any thing from his king, which an Englishman would not be

bound to bear? Their conditions may differ, but their *rights*, according to this account, should seem to be equal: and yet we are accustomed to speak of the *rights* as well as of the happiness of a free people, compared with what belong to the subjects of absolute monarchies; how, you will say, can this comparison be explained, unless we refer to a difference in the compacts by which they are respectively bound?—This is a fair question, and the answer to it will afford a farther illustration of our principles. We admit then that there are many things which a Frenchman is bound in conscience, as well as by coercion, to endure at the hands of his prince, to which an Englishman would not be obliged to submit: but we assert, that it is for these two reasons alone: *first*, because the same act of the prince is not the same grievance, where it is agreeable to the constitution, and where it infringes it; *secondly*, because redress in the two cases is not equally attainable. Resistance cannot be attempted with equal hopes of success, or with the same prospect of receiving support from others, where the people are reconciled to their sufferings, as where they are alarmed by innovation. In this way, and no otherwise, the

subjects of different states possess different civil rights; the duty of obedience is defined by different boundaries; and the point of justifiable resistance placed at different parts of the *scale* of suffering; all which is sufficiently intelligible without a social compact.

VII. "The interest of the whole society is "binding upon every part of it." No rule, short of this, will provide for the stability of civil government, or for the peace and safety of social life. Wherefore, as individual members of the state are not permitted to pursue their private emolument to the prejudice of the community, so is it equally a consequence of this rule, that no particular colony, province, town, or district, can justly concert measures for their separate interest, which shall appear at the same time to diminish the *sum* of public prosperity. I do not mean, that it is necessary to the justice of a measure, that it profit each and every part of the community: (for, as the happiness of the whole may be increased, whilst that of some parts is diminished, it is possible that the conduct of one part of an empire may be detrimental to some other part, and yet just, provided one part gain more in happiness than the other part loses, so that the common weal be

augmented by the change): but what I affirm is, that those counsels can never be reconciled with the obligations resulting from civil union, which cause the *whole* happiness of the society to be impaired for the conveniency of a *part*. This conclusion is applicable to the question of right between Great Britain and her revolted colonies. Had I been an American, I should not have thought it enough to have had it even demonstrated, that a separation from the parent state would produce effects beneficial to America; my relation to that state imposed upon me a farther inquiry, namely, whether the whole happiness of the empire was likely to be promoted by such a measure; Not indeed the happiness of every part; that was not necessary, nor to be expected;—but whether what Great Britain would lose by the separation, was likely to be compensated to the joint stock of happiness, by the advantages which America would receive from it. The contested claims of sovereign states, and their remote dependencies, may be submitted to the adjudication of this rule with mutual safety. A public advantage is measured by the advantage which each individual receives, and by the number of those who receive it. A public evil is compounded

of the same proportions. Whilst, therefore, a colony is small, or a province thinly inhabited, if a competition of interests arise between the original country and their acquired dominions, the former ought to be preferred; because it is fit that if one must necessarily be sacrificed, the less give place to the greater: but when, by an increase of population, the interest of the provinces begins to bear a considerable proportion to the *entire* interest of the community, it is possible that they may suffer so much by their subjection, that not only theirs, but the whole happiness of the empire may be obstructed by their union. The rule and principle of the calculation being still the same, the *result* is different: and this difference begets a new situation, which entitles the subordinate parts of the states to more equal terms of confederation, and if these be refused, to independency.

CHAPTER IV.

OF THE DUTY OF CIVIL OBEDIENCE, AS STATED IN THE CHRISTIAN SCRIPTURES.

We affirm that, as to the *extent* of our civil rights and obligations, *Christianity* hath left us where she found us; that she hath neither altered nor ascertained it; that the New Testament contains not one passage, which, fairly interpreted, affords either argument or objection applicable to any conclusions upon the subject that are deduced from the law and religion of nature.

The only passages which have been seriously alleged in the controversy, or which it is necessary for us to state and examine, are the two following; the one extracted from St. Paul's Epistle to the Romans, the other from the First General Epistle of St. Peter:—

ROMANS, xiii. 1—7.

"Let every soul be subject unto the high-
"er powers: for, there is no power but of
"God; the powers that be, are ordained of

" God. Whosoever therefore resisteth the " power, resisteth the ordinance of God: " and they that resist, shall receive to them- " selves damnation. For rulers are not a " terror to good works, but to the evil. Wilt " thou then not be afraid of the power? Do " that which is good, and thou shalt have " praise of the same: for he is the minister " of God to thee for good. But if thou do " that which is evil, be afraid: for, he bear- " eth not the sword in vain: for, he is the " minister of God, a revenger to *execute* " wrath upon him that doeth evil. Where- " fore ye must needs be subject, not only " for wrath, but also for conscience-sake. " For, for this cause pay you tribute also: " for, they are God's ministers, attending " continually upon this very thing. Render " therefore to all their dues; tribute to whom " tribute is due, custom to whom custom, " fear to whom fear, honour to whom ho- " nour."

1 PETER, ii. 13—18.

" Submit yourselves to every ordinance of " man, for the Lord's sake; whether it be " to the King as supreme; or unto Govern- " ors, or unto them that are sent by him for

" the punishment of evil-doers, and for the " praise of them that do well. For so is the " will of God, that with well-doing ye may " put to silence the ignorance of foolish men; " as free, and not using your liberty for a " cloak of maliciousness, but as the servants " of God."

To comprehend the proper import of these instructions, let the reader reflect, that upon the subject of civil obedience there are two questions; the first, whether to obey government be a moral duty and obligation upon the conscience at all? the second, how far, and to what cases, that obedience ought to extend? that these two questions are so distinguishable in the imagination, that it is possible to treat of the one, without any thought of the other; and lastly, that if expressions which relate to one of these questions be transferred and applied to the other, it is with great danger of giving them a signification very different from the author's meaning. This distinction is not only possible, but natural. If I met with a person who appeared to entertain doubts, whether civil obedience were a moral duty which ought to be voluntarily discharged, or whether it were not a mere submission to force,

like that which we yield to a robber who holds a pistol to our breast, I should represent to him the use and offices of civil government, the end and the necessity of civil subjection; or, if I preferred a different theory, I should explain to him the social compact, urge him with the obligation and the equity of his implied promise and tacit consent to be governed by the laws of the state from which he received protection; or I should argue, perhaps, that nature herself dictated the law of subordination, when she planted within us an inclination to associate with our species, and framed us with capacities so various and unequal. From whatever principle I set out, I should labour to infer from it this conclusion, "That obedience to the state is "to be numbered amongst the relative du- "ties of human life, for the transgression of "which we shall be accountable at the tri- "bunal of Divine justice, whether the ma- "gistrate be able to punish us for it or not;" and being arrived at this conclusion, I should stop, having delivered the conclusion itself, and throughout the whole argument expressed the obedience, which I inculcated, in the most general and unqualified terms; all reservations and restrictions being superfluous,

and foreign to the doubts I was employed to remove.

If in a short time afterwards, I should be accosted by the same person, with complaints of public grievances, of exorbitant taxes, of acts of cruelty and oppression, of tyrannical encroachments upon the ancient or stipulated rights of the people, and should be consulted whether it were lawful to revolt, or justifiable to join in an attempt to shake off the yoke by open resistance; I should certainly consider myself as having a case and question before me very different from the former. I should now define and discriminate. I should reply, that if public expediency be the foundation, it is also the measure, of civil obedience; that the obligation of subjects and sovereigns is reciprocal; that the duty of allegiance, whether it be founded in utility or compact, is neither unlimited nor unconditional; that peace may be purchased too dearly; that patience becomes culpable pusillanimity, when it serves only to encourage our rulers to increase the weight of our burden, or to bind it the faster; that the submission which surrenders the liberty of a nation, and entails slavery upon future generations, is enjoined by no law of rational mo-

rality ; finally, I should instruct the inquirer to compare the peril and expense of his enterprise with the effects it was expected to produce, and to make choice of the alternative, by which not his own present relief or profit, but the whole and permanent interest of the state, was likely to be best promoted. If any one who had been present at both these conversations, should upbraid me with change or inconsistency of opinion, should retort upon me the passive doctrine which I before taught, the large and absolute terms in which I then delivered lessons of obedience and submission, I should account myself unfairly dealt with. I should reply, that the only difference which the language of the two conversations presented was, that I added now many exceptions and limitations, which were omitted or unthought of then : that this difference arose naturally from the two occasions, such exceptions being as necessary to the subject of our present conference, as they would have been superfluous and unseasonable in the former. Now the difference in these two conversations is precisely the distinction to be taken in interpreting those passages of Scripture, concerning which we are debating. They

inculcate the *duty*, they do not describe the *extent* of it. They enforce the obligation by the proper sanctions of Christianity, without intending either to enlarge or contract, without considering indeed, the limits by which it is bounded. This is also the method in which the same apostles enjoin the duty of servants to their masters, of children to their parents, of wives to their husbands: "Servants, be subject to your masters."—"Children, obey your parents in all things."—"Wives, submit yourselves unto your own husbands." The same concise and absolute form of expression occurs in all these precepts; the same silence, as to any exceptions or distinctions: yet no one doubts but that the commands of masters, parents, and husbands, are often so immoderate, unjust, and inconsistent with other obligations, that they both may and ought to be resisted. In letters or dissertations written professedly upon separate articles of morality, we might with more reason have looked for a precise delineation of our duty, and some degree of modern accuracy in the rules which were laid down for our direction: but in those short collections of practical maxims which compose the conclusion, or some small por-

tion, of a doctrinal or perhaps controversial epistle, we cannot be surprised to find the author more solicitous to impress the duty, than curious to enumerate exceptions.

The consideration of this distinction is alone sufficient to vindicate these passages of Scripture from any explanation which may be put upon them, in favour of an unlimited passive obedience. But if we be permitted to assume a supposition, which many commentators proceed upon as a certainty, that the first Christians privately cherished an opinion, that their conversion to Christianity entitled them to new immunities, to an exemption, as of *right* (however they might give way to necessity), from the authority of the Roman sovereign, we are furnished with a still more apt and satisfactory interpretation of the apostles' words. The two passages apply with great propriety to the refutation of this error: they teach the Christian convert to obey the magistrate "for the "Lord's sake;"—"not only for wrath, but "for conscience-sake;"—"that there is no "power but of God;"—"that the powers "that be," even the present rulers of the Roman empire, though heathens and usurpers, seeing they are in possession of the ac-

tual and necessary authority of civil government, "are ordained of God;" and, consequently, entitled to receive obedience from those who profess themselves the peculiar servants of God, in a greater (certainly not in a less) degree than from any others. They briefly describe the office of "civil governors, "the punishment of evil-doers, and the praise "of them that do well;" from which description of the use of government, they justly infer the duty of subjection; which duty, being as extensive as the reason upon which it is founded, belongs to Christians no less than to the heathen members of the community. If it be admitted, that the two apostles wrote with a view to this particular question, it will be confessed, that their words cannot be transferred to a question totally different from this, with any certainty of carrying along with us their authority and intention. There exists no resemblance between the case of a primitive convert, who disputed the jurisdiction of the Roman government over a disciple of Christianity, and *his* who, acknowledging the general authority of the state over all its subjects, doubts whether that authority be not, in some important branch of it, so ill constituted or abused, as

to warrant the endeavours of the people to bring about a reformation by force. Nor can we judge what reply the apostles would have made to this *second* question if it had been proposed to them, from any thing they have delivered upon the *first*; any more than, in the two consultations above described, it could be known beforehand what I would say in the latter, from the answer which I gave to the former.

The only defect in this account is, that neither the Scriptures, nor any subsequent history of the early ages of the church, furnish any direct attestation of the existence of such disaffected sentiments amongst the primitive converts. They supply indeed some circumstances which render probable the opinion, that extravagant notions of the political rights of the Christian state were at that time entertained by many proselytes to the religion. From the question proposed to Christ, "Is it lawful to give tribute unto "Cæsar?" it may be presumed that doubts had been started in the Jewish schools concerning the obligation, or even the lawfulness, of submission to the Roman yoke. The accounts delivered by Josephus, of various insurrections of the Jews of that and the fol-

lowing age, excited by this principle, or upon this pretence, confirm the presumption. Now, as the Christians were at first chiefly taken from the Jews, confounded with them by the rest of the world, and, from the affinity of the two religions, apt to intermix the doctrines of both, it is not to be wondered at, that a tenet, so flattering to the self-importance of those who embraced it, should have been communicated to the new institution. Again, the teachers of Christianity, amongst the privileges which their religion conferred upon its professors, were wont to extol the "*liberty* into which they were called,"—"in "which Christ had made them free." This liberty, which was intended of a deliverance from the various servitude, in which they had heretofore lived, to the domination of sinful passions, to the superstition of the Gentile idolatry, or the encumbered ritual of the Jewish dispensation, might by some be interpreted to signify an emancipation from all restraint which was imposed by an authority merely human. At least, they might be represented by their enemies as maintaining notions of this dangerous tendency. To some error or calumny of this kind, the words of St. Peter seem to allude:—"For so is the

"will of God, that with well-doing ye may "put to silence the ignorance of foolish men: "as free, and not using your liberty for a "cloak of maliciousness (*i. e.* sedition), but "as the servants of God." After all, if any one think this conjecture too feebly supported by testimony, to be relied upon in the interpretation of Scripture, he will then revert to the considerations alleged in the preceding part of this chapter.

After so copious an account of what we apprehend to be the general design and doctrine of these much-agitated passages, little need be added in explanation of particular clauses. St. Paul has said, "Who-"soever resisteth the power, resisteth the "ordinance of God." This phrase, "the "ordinance of God," is by many so interpreted as to authorise the most exalted and superstitious ideas of the regal character. But, surely, such interpreters have sacrificed truth to adulation. For, in the first place, the expression, as used by St. Paul, is just as applicable to one kind of government, and to one kind of succession, as to another;—to the elective magistrates of a pure republic, as to an absolute hereditary monarch. In the next place, it is not affirmed of the supreme

magistrate exclusively, that *he* is the ordinance of God; the title, whatever it imports, belongs to every inferior officer of the state as much as to the highest. The divine right of *Kings* is, like the divine right of other magistrates,—the law of the land, or even actual and quiet possession of their office; —a right ratified, we humbly presume, by the Divine approbation, so long as obedience to their authority appears to be necessary or conducive to the common welfare. Princes are ordained of God by virtue only of that general decree, by which he assents, and adds the sanction of his will, to every law of society, which promotes his own purpose, the communication of human happiness; according to which idea of their origin and constitution (and without any repugnancy to the words of St. Paul), they are by St. Peter denominated the *ordinance* of *man*.

CHAPTER V.

OF CIVIL LIBERTY.

Civil Liberty is the not being restrained by any law, but what conduces in a greater degree to the public welfare.

To do what we will, is natural liberty: to do what we will, consistently with the interest of the community to which we belong, is civil liberty; that is to say, the only liberty to be desired in a state of civil society.

I should wish, no doubt, to be allowed to act in every instance as I pleased, but I reflect that the rest also of mankind would then do the same; in which state of universal independence and self-direction, I should meet with so many checks and obstacles to my own will, from the interference and opposition of other men's, that not only my happiness, but my liberty, would be less, than whilst the whole community were subject to the dominion of equal laws.

The boasted liberty of a state of nature exists only in a state of solitude. In every kind and degree of union and intercourse with his species, it is possible that the liberty of the individual may be augmented by the very laws which restrain it; because he may gain more from the limitation of other men's freedom than he suffers by the diminution of his own. Natural liberty is the right of common upon a waste; civil liberty is the safe, exclusive, unmolested enjoyment of a cultivated enclosure.

The definition of civil liberty above laid down, imports that the laws of a free people impose no restraints upon the private will of the subject, which do not conduce in *a greater degree* to the public happiness; by which it is intimated, 1st, that restraint itself is an evil; 2dly, that this evil ought to be overbalanced by some public advantage; 3dly, that the proof of this advantage lies upon the legislature; 4thly, that a law being found to produce no sensible good effects, is a sufficient reason for repealing it, as adverse and injurious to the rights of a free citizen, without demanding specific evidence of its bad effects. This maxim might be remembered with advantage in a revision of many laws of this country; especially of the game-laws; of the poor-laws, so far as they lay restrictions upon the poor themselves; of the laws against Papists and Dissenters: and, amongst people enamoured to excess and jealous of their liberty, it seems a matter of surprise, that this principle has been so imperfectly attended to.

The degree of actual liberty always bearing, according to this account of it, a reversed proportion to the number and severity of the *restrictions* which are either useless, or the

utility of which does not outweigh the evil of the restraint, it follows, that every nation possesses some, no nation perfect, liberty: that this liberty may be enjoyed under every form of government: that it may be impaired indeed, or increased, but that it is neither gained, nor lost, nor recovered, by any single regulation, change, or event whatever: that consequently, those popular phrases which speak of a free people; of a nation of slaves; which call one revolution the æra of liberty, or another the loss of it; with many expressions of a like absolute form; are intelligible only in a comparative sense.

Hence also we are enabled to apprehend the distinction between *personal* and *civil* liberty. A citizen of the freest republic in the world may be imprisoned for his crimes; and though his personal freedom be restrained by bolts and fetters, so long as his confinement is the effect of a beneficial public law, his civil liberty is not invaded. If this instance appear dubious, the following will be plainer. A passenger from the Levant, who, upon his return to England, should be conveyed to a lazaretto by an order of quarantine, with whatever impatience he might desire his enlargement, and though he saw a guard

placed at the door to oppose his escape, or even ready to destroy his life if he attempted it, would hardly accuse government of encroaching upon his civil freedom; nay, might, perhaps, be all the while congratulating himself that he had at length set his foot again in a land of liberty. The manifest expediency of the measure not only justifies it, but reconciles the most odious confinement with the perfect possession, and the loftiest notions, of civil liberty. And if this be true of the coercion of a prison, that it is compatible with a state of *civil* freedom, it cannot with reason be disputed of those more moderate constraints which the ordinary operation of government imposes upon the will of the individual. It is not the rigour, but the inexpediency of laws and acts of authority, which makes them tyrannical.

There is another idea of civil liberty, which, though neither so simple nor so accurate as the former, agrees better with the signification, which the usage of common discourse, as well as the example of many respectable writers upon the subject, has affixed to the term. This idea places liberty in security; making it to consist not merely in an actual exemption from the constraint

of useless and noxious laws and acts of dominion, but in being free from the *danger* of having such hereafter imposed or exercised. Thus, speaking of the political state of modern Europe, we are accustomed to say of Sweden, that she hath lost her *liberty* by the revolution which lately took place in that country; and yet we are assured that the people continue to be governed by the same laws as before, or by others which are wiser, milder, and more equitable. What then have they lost? They have lost the power and functions of their diet; the constitution of their states and orders, whose deliberations and concurrence were required in the formation and establishment of every public law; and thereby have parted with the security which they possessed against any attempts of the crown to harass its subjects, by oppressive and useless exertions of prerogative. The loss of this security we denominate the loss of liberty. They have changed, not their laws, but their legislature; not their enjoyment, but their safety; not their present burthens, but their prospects of future grievances: and this we pronounce a change from the condition of freemen to that of slaves. In like manner, in our own coun-

try, the act of parliament, in the reign of Henry the Eighth, which gave to the king's proclamation the force of law, has properly been called a complete and formal surrender of the liberty of the nation; and would have been so, although no proclamation were issued in pursuance of these new powers, or none but what was recommended by the highest wisdom and utility. The security was gone. Were it probable that the welfare and accommodation of the people would be as studiously, and as providently, consulted in the edicts of a despotic prince, as by the resolutions of a popular assembly, then would an absolute form of government be no less free than the purest democracy. The different degree of care and knowledge of the public interest which may reasonably be expected from the different form and composition of the legislature, constitutes the distinction, in respect of liberty, as well between these two extremes, as between all the intermediate modifications of civil government.

The definitions which have been framed of civil liberty, and which have become the subject of much unnecessary altercation, are most of them adapted to this idea. Thus one political writer makes the very essence

of the subject's liberty to consist in his being governed by no laws but those to which he hath actually consented; another is satisfied with an indirect and virtual consent; another, again, places civil liberty in the separation of the legislative and executive offices of government; another, in the being governed by *law*, that is, by known, preconstituted, inflexible rules of action and adjudication; a fifth, in the exclusive right of the people to tax themselves by their own representatives; a sixth, in the freedom and purity of elections of representatives; a seventh, in the control which the democratic part of the constitution possesses over the military establishment. Concerning which, and some other similar accounts of civil liberty, it may be observed that they all labour under one inaccuracy, *viz.* that they describe not so much liberty itself, as the safeguards and preservatives of liberty: for example, a man's being governed by no laws, but those to which he has given his consent, were it practicable, is no otherwise necessary to the enjoyment of civil liberty, than as it affords a probable security against the dictation of laws, imposing superfluous retrictions upon his private will. This remark is applicable to the rest.

The diversity of these definitions will not surprise us, when we consider that there is no contrariety or opposition amongst them whatever: for, by how many different provisions and precautions civil liberty is fenced and protected, so many different accounts of liberty itself, all sufficiently consistent with truth and with each other, may, according to this mode of explaining the term, be framed and adopted.

Truth cannot be offended by a definition, but propriety may. In which view, those definitions of liberty ought to be rejected, which, by making that essential to civil freedom which is unattainable in experience, inflame expectations that can never be gratified, and disturb the public content with complaints, which no wisdom or benevolence of government can remove.

It will not be thought extraordinary, that an idea, which occurs so much oftener as the subject of panegyric and careless declamation, than of just reasoning or correct knowledge, should be attended with uncertainty and confusion; or that it should be found impossible to contrive a definition, which may include the numerous, unsettled, and ever-varying significations, which the term is

made to stand for, and at the same time accord with the condition and experience of social life.

Of the two ideas that have been stated of civil liberty, whichever we assume, and whatever reasoning we found upon them, concerning its extent, nature, value, and preservation, this is the conclusion;—that *that* people, government, and constitution, is the *freest*, which makes the best provision for the enacting of expedient and salutary laws.

CHAPTER VI.

OF DIFFERENT FORMS OF GOVERNMENT.

As a series of appeals must be finite, there necessarily exists in every government a power from which the constitution has provided no appeal; and which power, for that reason, may be termed absolute, omnipotent, uncontrollable, arbitrary, despotic; and is alike so in all countries.

The person, or assembly, in whom this power resides, is called the *sovereign*, or the supreme power of the state.

Since to the same power universally ap-

pertains the office of establishing public laws, it is called also the *legislature* of the state.

A government receives its denomination from the form of the legislature; which form is likewise what we commonly mean by the *constitution* of a country.

Political writers enumerate three principal forms of government, which, however, are to be regarded rather as the simple forms, by some combination and intermixture of which all actual governments are composed, than as any-where existing in a pure and elementary state. These forms are,

I. Despotism, or absolute MONARCHY, where the legislature is in a single person.

II. An ARISTOCRACY, where the legislature is in a select assembly, the members of which either fill up by election the vacancies in their own body, or succeed to their places in it by inheritance, property, tenure of certain lands, or in respect of some personal right, or qualification.

III. A REPUBLIC, or democracy, where the people at large, either collectively or by representation, constitute the legislature.

The separate advantages of MONARCHY, are, unity of counsel, activity, decision, secrecy, dispatch; the military strength and energy which result from these qualities of

government; the exclusion of popular and aristocratical contentions: the preventing, by a known rule of succession, of all competition for the supreme power; and thereby repressing the hopes, intrigues, and dangerous ambition, of aspiring citizens.

The mischiefs, or rather the dangers, of MONARCHY are, tyranny, expense, exaction, military domination; unnecessary wars, waged to gratify the passions of an individual; risk of the character of the reigning prince; ignorance in the governors, of the interests and accommodation of the people, and a consequent deficiency of salutary regulations; want of constancy and uniformity in the rules of government, and, proceeding from thence, insecurity of person and property.

The separate advantage of an ARISTOCRACY consists in the wisdom which may be expected from experience and education:—a permanent council naturally possesses experience; and the members who succeed to their places in it by inheritance, will, probably, be trained and educated with a view to the stations which they are destined by their birth to occupy.

The mischiefs of an ARISTOCRACY are,

dissensions in the ruling orders of the state, which, from the want of a common superiour, are liable to proceed to the most desperate extremities; oppression of the lower orders by the privileges of the higher, and by laws partial to the separate interest of the law-makers.

The advantages of a REPUBLIC are, liberty, or exemption from needless restrictions; equal laws; regulations adapted to the wants and circumstances of the people; public spirit, frugality, averseness to war; the opportunities which democratic assemblies afford to men of every description, of producing their abilities and counsels to public observation, and the exciting thereby, and calling forth to the service of the commonwealth, the faculties of its best citizens.

The evils of a REPUBLIC are, dissension, tumults, faction; the attempts of powerful citizens to possess themselves of the empire; the confusion, rage, and clamour, which are the inevitable consequences of assembling multitudes, and of propounding questions of state to the discussion of the people; the delay and disclosure of public counsels and designs; and the imbecility of measures retarded by the necessity of obtaining the consent

of numbers: lastly, the oppression of the provinces which are not admitted to a participation in the legislative power.

A *mixed* government is composed by the combination of two or more of the simple forms of government above described:—and in whatever proportion each form enters into the constitution of a government, in the same proportion may both the advantages and evils, which we have attributed to that form, be expected: that is, those are the uses to be maintained and cultivated in each part of the constitution, and these are the dangers to be provided against in each. Thus, if secrecy and dispatch be truly enumerated amongst the separate excellencies of regal government, then a mixed government, which retains monarchy in one part of its constitution, should be careful that the other estates of the empire do not, by an officious and inquisitive interference with the executive functions, which are, or ought to be, reserved to the administration of the prince, interpose delays, or divulge what it is expedient to conceal. On the other hand, if profusion, exaction, military domination, and needless wars, be justly accounted natural properties of monarchy, in its simple unqualified form:

then are these the objects to which, in a mixed government, the aristocratic and popular part of the constitution ought to direct their vigilance; the dangers against which they should raise and fortify their barriers; these are departments of sovereignty, over which a power of inspection and control ought to be deposited with the people.

The same observation may be repeated of all the other advantages and inconveniences which have been ascribed to the several simple forms of government; and affords a rule whereby to direct the construction, improvements, and administration, of mixed governments,—subjected however to this remark, that a quality sometimes results from the conjunction of two simple forms of government, which belongs not to the separate existence of either: thus corruption, which has no place in an absolute monarchy, and little in a pure republic, is sure to gain admission into a constitution which divides the supreme power between an executive magistrate and a popular council.

An *hereditary* MONARCHY is universally to be preferred to an *elective* monarchy. The confession of every writer on the subject of civil government, the experience of ages, the

example of Poland, and of the papal dominions, seem to place this amongst the few indubitable maxims which the science of politics admits of. A crown is too splendid a prize to be conferred upon merit: the passions or interests of the electors exclude all consideration of the qualities of the competitors. The same observation holds concerning the appointments to any office which is attended with a great share of power or emolument. Nothing is gained by a popular choice, worth the dissensions, tumults, and interruption of regular industry, with which it is inseparably attended. Add to this, that a king, who owes his elevation to the event of a contest, or to any other cause than a fixed rule of succession, will be apt to regard one part of his subjects as the associates of his fortune, and the other as conquered foes. Nor should it be forgotten, amongst the advantages of an *hereditary* monarchy, that, as plans of national improvement and reform are seldom brought to maturity by the exertions of a single reign, a nation cannot attain to the degree of happiness and prosperity to which it is capable of being carried, unless an uniformity of counsels, a consistency of public measures and designs, be continued

through a succession of ages. This benefit may be expected with greater probability where the supreme power descends in the same race, and where each prince succeeds, in some sort, to the aim, pursuits, and disposition of his ancestor, than if the crown, at every change, devolve upon a stranger, whose first care will commonly be to pull down what his predecessor had built up; and to substitute systems of administration, which must, in their turn, give way to the more favourite novelties of the next successor.

ARISTOCRACIES are of two kinds.—First, where the power of the nobility belongs to them in their collective capacity alone; that is, where, although the government reside in an assembly of the order, yet the members of that assembly separately and individually possess no authority or privilege beyond the rest of the community:—this describes the constitution of Venice. Secondly, where the nobles are severally invested with great personal power and immunities, and where the power of the senate is little more than the aggregated power of the individuals who compose it:—this is the constitution of Poland. Of these two forms of government, the first is more tolerable than the last: for, although

the members of a senate should many, or even all of them, be profligate enough to abuse the authority of their stations in the prosecution of private designs, yet, not being all under a temptation to the same injustice, not having all the same end to gain, it would still be difficult to obtain the consent of a majority to any specific act of oppression which the iniquity of an individual might prompt him to propose: or if the will were the same, the power is more confined; one tyrant, whether the tyranny reside in a single person, or a senate, cannot exercise oppression at so many places, at the same time, as it may be carried on by the dominion of a numerous nobility over their respective vassals and dependants. Of all species of domination, this is the most odious: the freedom and satisfaction of private life are more constrained and harassed by it than by the most vexatious law, or even by the lawless will of an arbitrary monarch, from whose knowledge, and from whose injustice, the greatest part of his subjects are removed by their distance, or concealed by their obscurity.

Europe exhibits more than one modern example, where the people, aggrieved by the exactions, or provoked by the enormities, of

their immediate superiors, have joined with the reigning prince in the overthrow of the aristocracy, deliberately exchanging their condition for the miseries of despotism. About the middle of the last century, the commons of Denmark, weary of the oppressions which they had long suffered from the nobles, and exasperated by some recent insults, presented themselves at the foot of the throne with a formal offer of their consent to establish unlimited dominion in the king. The revolution in Sweden, still more lately brought about with the acquiescence, not to say the assistance, of the people, owed its success to the same cause, namely, to the prospect of deliverance that it afforded from the tyranny which their nobles exercised under the old constitution. In England, the people beheld the depression of the barons, under the house of Tudor, with satisfaction, although they saw the crown acquiring thereby a power which no limitations that the constitution had then provided were likely to confine. The lesson to be drawn from such events is this: that a mixed government, which admits a patrician order into its constitution, ought to circumscribe the personal privileges of the nobility, especially claims of

hereditary jurisdiction and local authority, with a jealousy equal to the solicitude with which it wishes its own preservation: for, nothing so alienates the minds of the people from the government under which they live, by a perpetual sense of annoyance and inconveniency, or so prepares them for the practices of an enterprising prince or a factious demagogue, as the abuse which almost always accompanies the existence of separate immunities.

Amongst the inferior, but by no means inconsiderable advantages of a DEMOCRATIC constitution, or of a constitution in which the people partake of the power of legislation, the following should not be neglected:

I. The direction which it gives to the education, studies, and pursuits of the superior orders of the community. The share which this has in forming the public manners and national character, is very important. In countries, in which the gentry are excluded from all concern in the government, scarcely any thing is left which leads to advancement, but the profession of arms. They who do not addict themselves to this profession (and miserable must that country be, which constantly employs the military service of a great

proportion of any order of its subjects!) are commonly lost by the mere want of object and destination; that is, they either fall, without reserve, into the most sottish habits of animal gratification, or entirely devote themselves to the attainment of those futile arts and decorations which compose the business and recommendations of a court; on the other hand, where the whole, or any effective portion of civil power is possessed by a popular assembly, more serious pursuits will be encouraged; purer morals, and a more intellectual character, will engage the public esteem; those faculties which qualify men for deliberation and debate, and which are the fruit of sober habits, of early and long-continued application, will be roused and animated by the reward, which, of all others, most readily awakens the ambition of the human mind—political dignity and importance.

II. Popular elections procure to the common people courtesy from their superiors. That contemptuous and overbearing insolence, with which the lower orders of the community are wont to be treated by the higher, is greatly mitigated where the people have something to give. The assiduity with which

their favour is sought upon these occasions, serves to generate settled habits of condescension and respect; and as human life is more embittered by affronts than injuries, whatever contributes to procure mildness and civility of manners towards those who are most liable to suffer from a contrary behaviour, corrects, with the pride, in a great measure the evil of inequality, and deserves to be accounted among the most generous institutions of social life.

III. The satisfactions which the people in free governments derive from the knowledge and agitation of political subjects; such as the proceedings and debates of the senate; the conduct and characters of ministers; the revolutions, intrigues, and contentions of parties; and, in general, from the discussion of public measures, questions, and occurrences. Subjects of this sort excite just enough of interest and emotion to afford a moderate engagement to the thoughts, without rising to any painful degree of anxiety, or ever leaving a fixed oppression upon the spirits; —and what is this, but the end and aim of all those amusements, which compose so much of the business of life and of the value of riches? For my part (and I believe it to be

the case with most men who are arrived at the middle age, and occupy the middle classes of life), had I all the money, which I pay in taxes to government, at liberty to lay out upon amusement and diversion, I know not whether I could make choice of any in which I could find greater pleasure than what I receive from expecting, hearing, and relating public news; reading parliamentary debates and proceedings; canvassing the political arguments, projects, predictions, and intelligence, which are conveyed, by various channels, to every corner of the kingdom. These topics, exciting universal curiosity, and being such as almost every man is ready to form and prepared to deliver his opinion about, greatly promote, and, I think, improve conversation. They render it more rational and more innocent; they supply a substitute for drinking, gaming, scandal, and obscenity. Now the secrecy, the jealousy, the solitude, and precipitation of despotic governments, exclude all this. But the loss, you say, is trifling. I know that it is possible to render even the mention of it ridiculous, by representing it as the idle employment of the most insignificant part of the nation, the folly of village-statesmen and coffee-house politicians:

but I allow nothing to be a trifle which ministers to the harmless gratification of multitudes; nor any order of men to be insignificant, whose number bears a respectable proportion to the sum of the whole community.

We have been accustomed to an opinion, that a REPUBLICAN form of government suits only with the affairs of a small state: which opinion is founded in the consideration, that unless the people, in every district of the empire, be admitted to a share in the national representation, the government is not, as to them, a republic; that elections, where the constituents are numerous, and dispersed through a wide extent of country, are conducted with difficulty, or rather, indeed, managed by the intrigues and combinations of a few, who are situated near the place of election, each voter considering his single sufferage as too minute a portion of the general interest to deserve his care or attendance, much less to be worth any opposition to influence and application; that whilst we contract the representation within a compass small enough to admit of orderly debate, the interest of the constituent becomes too small, of the representative too great. It is difficult

also to maintain any connexion between them. He who represents two hundred thousand, is necessarily a stranger to the greatest part of those who elect him; and when his interest amongst them ceases to depend upon an acquaintance with their persons and character, or a care or knowledge of their affairs; when such a representative finds the treasures and honours of a great empire at the disposal of a few, and himself one of the few, there is little reason to hope that he will not prefer to his public duty those temptations of personal aggrandisement which his situation offers, and which the price of his vote will always purchase. All appeal to the people is precluded by the impossibility of collecting a sufficient proportion of their force and numbers. The factions and the unanimity of the senate are equally dangerous. Add to these considerations, that in a democratic constitution the mechanism is too complicated, and the motions too slow, for the operations of a great empire; whose defence and government require execution and dispatch, in proportion to the magnitude, extent, and variety of its concerns. There is weight, no doubt, in these reasons; but much of the objection seems to be done away by the con-

trivance of a *federal* republic, which, distributing the country into districts of a commodious extent, and leaving to each district its internal legislation, reserves to a convention of the states the adjustment of their relative claims; the levying, direction, and government of the common force of the confederacy; the requisition of subsidies for the support of this force; the making of peace and war; the entering into treaties; the regulation of foreign commerce; the equalisation of duties upon imports, so as to prevent the defrauding of the revenue of one province by smuggling articles of taxation from the borders of another; and likewise so as to guard against undue partialities in the encouragement of trade. To what limits such a republic might, without inconveniency, enlarge its dominions, by assuming neighbouring provinces into the confederation; or how far it is capable of uniting the liberty of a small commonwealth with the safety of a powerful empire; or whether, amongst coordinate powers, dissensions and jealousies would not be likely to arise, which, for want of a common superior, might proceed to fatal extremities, are questions, upon which the records of mankind do not authorise us

to decide with tolerable certainty. The experiment is about to be tried in America upon a large scale.

CHAPTER VII.

OF THE BRITISH CONSTITUTION.

By the CONSTITUTION of a country, is meant so much of its law, as relates to the designation and form of the legislature; the rights and functions of the several parts of the legislative body; the construction, office, and jurisdiction of courts of justice. The constitution is one principal division, section, or title, of the code of public laws; distinguished from the rest only by the superior importance of the subject of which it treats. Therefore the terms *constitutional* and *unconstitutional*, mean legal and illegal. The distinction and the ideas, which these terms denote, are founded in the same authority with the law of the land upon any other subject; and to be ascertained by the same inquiries. In England, the system of public jurisprudence is made up of acts of parliament,

of decisions of courts of law, and of memorial usages: consequently, these are the principles of which the English constitution itself consists, the sources from which all our knowledge of its nature and limitations is to be deduced, and the authorities to which all appeal ought to be made, and by which every constitutional doubt and question can alone be decided. This plain and intelligible definition is the more necessary to be preserved in our thoughts, as some writers upon the subject absurdly confound what is constitutional with what is expedient; pronouncing forthwith a measure to be unconstitutional, which they adjudge in any respect to be detrimental or dangerous; whilst others, again, ascribe a kind of transcendant authority, or mysterious sanctity, to the constitution, as if it were founded in some higher original than that which gives force and obligation to the ordinary laws and statutes of the realm, or were inviolable on any other account than its intrinsic utility. An act of parliament in England can never be unconstitutional, in the strict and proper acceptation of the term; in a lower sense it may, *viz.* when it militates with the spirit, contradicts the analogy, or

defeats the provision of other laws, made to regulate the form of government. Even that flagitious abuse of their trust, by which a parliament of Henry the Eighth conferred upon the king's proclamation the authority of law, was unconstitutional only in this latter sense.

Most of those who treat of the British constitution, consider it as a scheme of government formally planned and contrived by our ancestors, in some certain æra of our national history, and as set up in pursuance of such regular plan and design. Something of this sort is secretly supposed, or referred to, in the expressions of those who speak of the "principle of the constitution," of bringing back the constitution to its "first prin-" ciples," of restoring it to its "original pu-" rity," or "primitive model." Now, this appears to me an erroneous conception of the subject. No such plan was ever formed, consequently no such first principles, original model, or standard, exist: I mean, there never was a date or point of time in our history, when the government of England was to be set up anew, and when it was referred to any single person, or assembly, or committee, to frame a charter for the future go-

vernment of the country; or when a constitution so prepared and digested, was by common consent received and established. In the time of the civil wars, or rather between the death of Charles the First and the restoration of his son, many such projects were published, but none were carried into execution. The Great Charter, and the Bill of Rights, were wise and strenuous efforts to obtain security against certain abuses of regal power, by which the subject had been formerly aggrieved: but these were, either of them, much too partial modifications of the constitution, to give it a new original. The constitution of England, like that of most countries of Europe, hath grown out of occasion and emergency; from the fluctuating policy of different ages; from the contensions, successes, interests, and opportunities of different orders and parties of men in the community. It resembles one of those old mansions, which, instead of being built all at once, after a regular plan, and according to the rules of architecture at present established, has been reared in different ages of the art, has been altered from time to time, and has been continually receiving additions and repairs suited to the taste, for-

tune, or conveniency of its successive proprietors. In such a building, we look in vain for the elegance and proportion, for the just order and correspondence of parts, which we expect in a modern edifice; and which external symmetry, after all, contributes much more perhaps to the amusement of the beholder, than the accommodation of the inhabitant.

In the British, and possibly in all other constitutions, there exists a wide difference between the actual state of the government and the theory. The one results from the other: but still they are different. When we contemplate the *theory* of the British government, we see the king invested with the most absolute personal impunity; with a power of rejecting laws, which have been resolved upon by both houses of parliament; of conferring by his charter, upon any set or succession of men he pleases, the privilege of sending representatives into one house of parliament, as by his immediate appointment he can place whom he will in the other. What is this, a foreigner might ask, but a more circuitous despotism? Yet, when we turn our attention from the legal extent, to the actual exercise of royal authority in Eng-

land, we see these formidable prerogatives dwindled into mere ceremonies; and, in their stead, a sure and commanding influence, of which the constitution, it seems, is totally ignorant, growing out of that enormous patronage, which the increased territory and opulence of the empire have placed in the disposal of the executive magistrate.

Upon questions of reform, the habit of reflection to be encouraged, is a sober comparison of the constitution under which we live,—not with models of speculative perfection, but with the actual chance of obtaining a better. This turn of thought will generate a political disposition, equally removed from that puerile admiration of present establishments, which sees no fault, and can endure no change, and that distempered sensibility, which is alive only to perceptions of inconveniency, and is too impatient to be delivered from the uneasiness which it feels, to compute either the peril or expense of the remedy. Political innovations commonly produce many effects beside those that are intended. The direct consequence is often the least important. Incidental, remote, and unthought-of evil or advantages frequently exceed the good that is designed, or the mis-

chief that is foreseen. It is from the silent and unobserved operation, from the obscure progress of causes set at work for different purposes, that the greatest revolutions take their rise. When Elizabeth, and her immediate successor, applied themselves to the encouragement and regulation of trade by many wise laws, they knew not, that, together with wealth and industry, they were diffusing a consciousness of strength and independency which would not long endure, under the forms of a mixed government, the dominion of arbitrary princes. When it was debated whether the mutiny-act, the law by which the army is governed and maintained, should be temporary or perpetual, little else probably occurred to the advocates of an annual bill, than the expediency of retaining a control over the most dangerous prerogative of the crown,—the direction and command of a standing army; whereas, in its effect, this single reservation has altered the whole frame and quality of the British constitution. For since, in consequence of the military system which prevails in neighbouring and rival nations, as well as on account of the internal exigencies of government, a standing army has become essential to the safety and admi-

nistration of the empire, it enables parliament, by discontinuing this necessary provision, so to enforce its resolutions upon any other subject, as to render the king's dissent to a law, which has received the approbation of both houses, too dangerous an experiment any longer to be advised. A contest between the king and parliament, cannot now be persevered in without a dissolution of the government. Lastly, when the constitution conferred upon the crown the nomination to all employments in the public service, the authors of this arrangement were led to it, by the obvious propriety of leaving to a master the choice of his servants; and by the manifest inconveniency of engaging the national council, upon every vacancy, in those personal contests which attend elections to places of honour and emolument. Our ancestors did not observe that this disposition added an influence to the regal office, which, as the number and value of public employments increased, would supersede in a great measure the forms, and change the character of the ancient constitution. They knew not, what the experience and reflection of modern ages has discovered, that patronage universally is power; that he who possesses in a

sufficient degree the means of gratifying the desires of mankind after wealth and distinction, by whatever checks and forms his authority may be limited or disguised, will direct the management of public affairs. Whatever be the mechanism of the political engine, he will guide the motion. These instances are adduced in order to illustrate the proposition which we laid down, that, in politics, the most important and permanent effects have, for the most part, been incidental and unforeseen: and this proposition we inculcate, for the sake of the caution which teaches that changes ought not to be adventured upon without a *comprehensive* discernment of the consequences,—without a knowledge as well of the remote tendency, as of the immediate design. The courage of a statesman should resemble that of a commander, who, however regardless of personal danger, never forgets, that, with his own, he commits the lives and fortunes of a multitude; and who does not consider it as any proof of zeal or valour, to stake the safety of *other* men upon the success of a perilous or desperate enterprise.

There is one end of civil government peculiar to a good constitution, namely, the

happiness of its subjects; there is another end essential to a good government, but common to it with many bad ones,—its own preservation. Observing that the best form of government would be defective, which did not provide for its own permanency, in our political reasonings we consider all such provisions as expedient; and are content to accept as a sufficient ground for a measure, or law, that it is necessary or conducive to the preservation of the constitution. Yet, in truth, such provisions are absolutely expedient, and such an excuse final, only whilst the constitution is worth preserving; that is, until it can be exchanged for a better. I premise this distinction, because many things in the English, as in every constitution, are to be vindicated and accounted for, solely from their tendency to maintain the government in its present state, and the several parts of it in possession of the powers which the constitution has assigned to them; and because I would wish it to be remarked that such a consideration is always subordinate to another,—the value and usefulness of the constitution itself.

The Government of England which has been sometimes called a mixed government,

sometimes a limited monarchy, is formed by a combination of the three regular species of government; the monarchy, residing in the King; the aristocracy, in the House of Lords; and the republic, being represented by the House of Commons. The perfection intended by such a scheme of government is, to unite the advantages of the several simple forms, and to exclude the inconveniencies. To what degree this purpose is attained or attainable in the British constitution; wherein it is lost sight of or neglected; and by what means it may in any part be promoted with better success, the reader will be enabled to judge, by a separate recollection of these advantages and inconveniencies, as enumerated in the preceding chapter, and a distinct application of each to the political condition of this country. We will present our remarks upon the subject in a brief account of the expedients by which the British constitution provides,

1st. For the interest of its subjects.

2dly. For its own preservation.

The contrivances for the first of these purposes, are the following:

In order to promote the establishment of salutary public laws, every citizen of the

state is capable of becoming a member of the senate: and every senator possesses the right of propounding to the deliberation of the legislature whatever law he pleases.

Every district of the empire enjoys the privilege of choosing representatives, informed of the interests and circumstances and desires of their constituents, and entitled by their situation to communicate that information to the national council. The meanest subject has some one whom he can call upon to bring forward his complaints and requests to public attention.

By annexing the right of voting for members of the House of Commons to different qualifications in different places, each order and profession of men in the community become virtually represented; that is, men of all orders and professions, statesmen, courtiers, country-gentlemen, lawyers, merchants, manufacturers, soldiers, sailors, interested in the prosperity, and experienced in the occupation of their respective professions, obtain seats in parliament.

The elections, at the same time, are so connected with the influence of landed property, as to afford a certainty that a considerable

number of men of great estates will be returned to parliament; and are also so modified, that men the most eminent and successful in their respective professions, are the most likely, by their riches, or the weight of their stations, to prevail in these competitions.

The number, fortune, and quality of the members; the variety of interests and characters amongst them; above all, the temporary duration of their power, and the change of men which every new election produces, are so many securities to the public, as well against the subjection of their judgements to any external dictation, as against the formation of a junto in their own body, sufficiently powerful to govern their decisions.

The representatives are so intermixed with the constituents, and the constituents with the rest of the people, that they cannot, without a partiality too flagrant to be endured, impose any burthen upon the subject, in which they do not share themselves; nor scarcely can they adopt an advantageous regulation, in which their own interests will not participate of the advantage.

The proceedings and debates of parliament, and the parliamentary conduct of each representative are known by the people at large.

The representative is so far dependent upon the constituent, and political importance upon public favour, that a member of parliament cannot more effectually recommend himself to eminence and advancement in the state, than by contriving and patronising laws of public utility.

When intelligence of the condition, wants, and occasions of the people, is thus collected from every quarter; when such a variety of invention, and so many understandings, are set at work upon the subject; it may be presumed, that the most eligible expedient, remedy, or improvement, will occur to some one or other: and when a wise counsel, or beneficial regulation, is once suggested, it may be expected, from the disposition of an assembly so constituted as the British House of Commons is, that it cannot fail of receiving the approbation of a majority.

To prevent those destructive contentions for the supreme power, which are sure to take place where the members of the state do not live under an acknowledged head, and a known rule of succession; to preserve the

people in tranquillity at home, by a speedy and vigorous execution of the laws; to protect their interest abroad, by strength and energy in military operations, by those advantages of decision, secrecy, and dispatch, which belong to the resolutions of monarchical councils;—for these purposes, the constitution has committed the executive government to the administration and limited authority of an hereditary king.

In the defence of the empire; in the maintenance of its power, dignity, and privileges, with foreign nations; in the advancement of its trade by treaties and conventions; and in the providing for the general administration of municipal justice, by a proper choice and appointment of magistrates, the inclination of the king and of the people usually coincides: in this part, therefore, of the regal office, the constitution entrusts the prerogative with ample powers.

The dangers principally to be apprehended from regal government, relate to the two articles *taxation* and *punishment*. In every form of government, from which the people are excluded, it is the interest of the governors to get as much, and of the governed to give as little, as they can: the power

also of punishment, in the hands of an arbitrary prince, oftentimes becomes an engine of extortion, jealousy, and revenge. Wisely, therefore, hath the British constitution guarded the safety of the people, in these two points, by the most studious precautions.

Upon that of *taxation*, every law which, by the remotest construction, may be deemed to levy money upon the property of the subject, must originate, that is, must first be proposed and assented to, in the House of Commons: by which regulation, accompanying the weight which that assembly possesses in all its functions, the levying of taxes is almost exclusively reserved to the popular part of the constitution, who, it is presumed, will not tax themselves, nor their fellow-subjects, without being first convinced of the necessity of the aids which they grant.

The application also of the public supplies, is watched with the same circumspection as the assessment. Many taxes are annual; the produce of others is mortgaged, or appropriated to specific services: the expenditure of all of them is accounted for in the House of Commons; as computations of the charge of the purpose, for which they are

wanted, are previously submitted to the same tribunal.

In the infliction of *punishment*, the power of the crown, and of the magistrate appointed by the crown, is confined by the most precise limitations: the guilt of the offender must be pronounced by twelve men of his own order, indifferently chosen out of the county where the offence was committed: the punishment, or the limits to which the punishment may be extended, are ascertained, and affixed to the crime, by laws which know not the person of the criminal.

And whereas arbitrary or clandestine confinement is the injury most to be dreaded from the strong hand of the executive government, because it deprives the prisoner at once of protection and defence, and delivers him into the power, and to the malicious or interested designs, of his enemies; the constitution has provided against this danger with double solicitude. The ancient writ of habeas corpus, the habeas-corpus act of Charles the Second, and the practice and determinations of our sovereign courts of justice founded upon these laws, afford a complete

remedy for every conceivable case of illegal imprisonment *.

Treason being that charge, under colour of which the destruction of an obnoxious individual is often sought; and government being at all times more immediately a party in the prosecution; the law, beside the general care with which it watches over the safety of the accused, in this case, sensible of the unequal contest in which the subject is engaged, has assisted his defence with ex-

* Upon complaint in writing by, or on behalf of, any person in confinement, to any of the four courts of Westminster Hall, in term time, or to the Lord Chancellor, or one of the Judges, in the vacation; and upon a probable reason being suggested to question the legality of the detention, a writ is issued to the person in whose custody the complainant is alleged to be, commanding him within a certain limited and short time to produce the body of the prisoner, and the authority under which he is detained. Upon the return of the writ, strict and instantaneous obedience to which is enforced by very severe penalties, if no lawful cause of imprisonment appear, the court or judge, before whom the prisoner is brought, is authorised and bound to discharge him; even though he may have been committed by a secretary, or other high officer of state, by the privy council or by the king in person; so that no subject of this realm can be held in confinement by any power, or under any pretence whatever, provided he can find means to convey his complaints to one of the four courts of Westminster Hall, or, during their recess, to any of the judges of the same, unless all these several tribunals agree in determining his imprisonment to be legal. He may make application to them, in succession; and if one out of the number be found, who thinks the prisoner entitled to his liberty, that one possesses authority to restore it to him.

traordinary indulgencies. By two statutes, enacted since the Revolution, every person indicted for high treason shall have a copy of his indictment, a list of the witnesses to be produced, and of the jury impannelled, delivered to him ten days before the trial; he is also permitted to make his defence by counsel:—privileges which are not allowed to the prisoner, in a trial for any other crime: and, what is of more importance to the party than all the rest, the testimony of two witnesses, at the least, is required to convict a person of treason; whereas, one positive witness is sufficient in almost every other species of accusation.

We proceed, in the second place, to inquire in what manner the constitution has provided for its own preservation; that is, in what manner each part of the legislature is secured in the exercise of the powers assigned to it, from the encroachments of the other parts. The security is sometimes called the *balance of the constitution*: and the political equilibrium, which this phrase denotes, consists in two contrivances;—a balance of power, and a balance of interest. By a balance of power is meant, that there is no power possessed by one part of the le-

gislature, the abuse, or excess of which is not checked by some antagonist power, residing in another part. Thus the power of the two houses of parliament to frame laws, is checked by the king's negative; that, if laws subversive of regal government should obtain the consent of parliament, the reigning prince, by interposing his prerogative, may save the necessary rights and authority of his station. On the other hand, the arbitrary application of this negative is checked by the privilege which parliament possesses, of refusing supplies of money to the exigencies of the king's administration. The constitutional maxim, "that the king can "do no wrong," is balanced by another maxim, not less constitutional, "that the il- "legal commands of the king do not justify "those who assist, or concur, in carrying them "into execution;" and by a second rule, subsidiary to this, "that the acts of the crown "acquire not a legal force, until authenti- "cated by the subscription of some of its "great officers." The wisdom of this contrivance is worthy of observation. As the king could not be punished, without a civil war, the constitution exempts his person from trial or account; but, lest this impunity

should encourage a licentious exercise of dominion, various obstacles are opposed to the private will of the sovereign, when directed to illegal objects. The pleasure of the crown must be announced with certain solemnities, and attested by certain officers of state. In some cases, the royal order must be signified by a secretary of state; in others it must pass under the privy seal; and, in many, under the great seal. And when the king's command is regularly published, no mischief can be achieved by it, without the ministry and compliance of those to whom it is directed. Now all who either concur in an illegal order by authenticating its publication with their seal or subscription, or who in any manner assist in carrying it into execution, subject themselves to prosecution and punishment, for the part they have taken: and are not permitted to plead or produce the command of the king, in justification of their obedience*. But farther: the power

* Amongst the checks which parliament holds over the administration of public affairs, I forbear to mention the practice of addressing the king, to know by whose advice he resolved upon a particular measure; and of punishing the authors of that advice, for the counsel they had given. Not because I think this method either unconstitutional or improper; but for this reason:—that it does not so much subject the king to the control of parliament, as it sup-

of the crown to direct the military force of the kingdom, is balanced by the annual necessity of resorting to parliament for the maintenance and government of that force. The power of the king to declare war, is checked by the privilege of the House of Commons, to grant or withhold the supplies by which the war must be carried on. The king's choice of his ministers is controlled by the obligation he is under of appointing those men to offices in the state, who are found capable of managing the affairs of his government, with the two houses of parliament. Which consideration imposes such a necessity upon the crown, as hath in a great measure subdued the influence of favouritism: insomuch that it is become no uncommon spectacle in this country, to see men promoted by the king to the highest offices and richest preferments which he has in his power to bestow, who have been distinguished by their opposition to his personal inclinations.

poses him to be already in subjection. For if the king were so far out of the reach of the resentment of the House of Commons, as to be able with safety to refuse the information requested, or to take upon himself the responsibility inquired after, there must be an end of all proceedings founded in this mode of application.

By the *balance of interest*, which accompanies and gives efficacy to the *balance of power*, is meant this;—that the respective interests of the three estates of the empire are so disposed and adjusted, that whichever of the three shall attempt any encroachment, the other two will unite in resisting it. If the king should endeavour to extend his authority, by contracting the power and privileges of the Commons, the House of Lords would see their own dignity endangered by every advance which the crown made to independency upon the resolutions of parliament. The admission of arbitrary power is no less formidable to the grandeur of the aristocracy, than it is fatal to the liberty of the republic; that is, it would reduce the nobility from the hereditary share they possess in the national councils, in which their real greatness consists, to the being made a part of the empty pageantry of a despotic court. On the other hand, if the House of Commons should intrench upon the distinct province, or usurp the established prerogative of the crown, the House of Lords would receive an instant alarm from every new stretch of popular power. In every contest in which the king may be engaged with the

representative body, in defence of his established share of authority, he will find a sure ally in the collective power of the nobility. An attachment to the monarchy, from which they derive their own distinction, the allurements of a court, in the habits and with the sentiments of which they have been brought up; their hatred of equality and of all levelling pretensions, which may ultimately affect the privileges, or even the existence of their order; in short, every principle and every prejudice which are wont to actuate human conduct, will determine their choice to the side and support of the crown. Lastly, if the nobles themselves should attempt to revive the superiorities which their ancestors exercised under the feudal constitution, the king and the people would alike remember, how the one had been insulted, and the other enslaved, by that barbarous tyranny. They would forget the natural opposition of their views and inclinations, when they saw themselves threatened with the return of a domination, which was odious and intolerable to both.

The reader will have observed, that in describing the British constitution, little notice has been taken of the House of Lords. The proper use and design of this part of the constitution, are the following: First, to enable the king, by his right of bestowing the peerage, to reward the servants of the public, in a manner most grateful to them, and at a small expense to the nation; secondly, to fortify the power and to secure the stability of regal government, by an order of men naturally allied to its interests: and, thirdly, to answer a purpose, which, though of superior importance to the other two, does not occur so readily to our observation; namely, to stem the progress of popular fury. Large bodies of men are subject to sudden phrensies. Opinions are sometimes circulated amongst a multitude without proof or examination, acquiring confidence and reputation merely by being repeated from one to another; and passions founded upon these opinions, diffusing themselves with a rapidity which can neither be accounted for nor resisted, may agitate a country with the most violent commotions. Now the only way to stop the fermentation, is to divide

the mass; that is, to erect different orders in the community, with separate prejudices and interests. And this may occasionally become the use of an hereditary nobility, invested with a share of legislation. Averse to those prejudices which actuate the minds of the vulgar; accustomed to condemn the clamour of the populace; disdaining to receive laws and opinions from their inferiors in rank, they will oppose resolutions which are founded in the folly and violence of the lower part of the community. Were the voice of the people always dictated by reflection; did every man, or even one man in a hundred, think for himself, or actually consider the measure he was about to approve or censure; or even were the common people tolerably steadfast in the judgement which they formed, I should hold the interference of a superior order not only superfluous, but wrong: for when every thing is allowed to difference of rank and education, which the actual state of these advantages deserves, that, after all, is most likely to be right and expedient, which appears to be so to the separate judgement and decision of a great majority of the nation; at least, that, in general, is right *for them*, which is agreeable to their fixed

opinions and desires. But when we observe what is urged as the public opinion, to be, in truth, the opinion only, or perhaps the feigned profession, of a few crafty leaders; that the numbers who join in the cry, serve only to swell and multiply the sound, without any accession of judgement, or exercise of understanding; and that oftentimes the wisest counsels have been thus overborne by tumult and uproar;—we may conceive occasions to arise, in which the commonwealth may be saved by the reluctance of the nobility to adopt the caprices, or to yield to the vehemence of the common people. In expecting this advantage from an order of nobles, we do not suppose the nobility to be more unprejudiced than others; we only suppose that their prejudices will be different from, and may occasionally counteract, those of others.

If the personal privileges of the peerage, which are usually so many injuries to the rest of the community, be restrained, I see little inconveniency in the increase of its number; for, it is only dividing the same quantity of power amongst more hands, which is rather favourable to public freedom than otherwise.

The admission of a small number of ecclesiastics into the House of Lords, is but an equitable compensation to the clergy for the exclusion of their order from the House of Commons. They are a set of men considerable by their number and property, as well as by their influence, and the duties of their station; yet, whilst every other profession has those amongst the national representatives, who, being conversant in the same occupation, are able to state, and naturally disposed to support, the rights and interests of the class and calling to which they belong, the clergy alone are deprived of this advantage: which hardship is made up to them by introducing the prelacy into parliament; and if bishops, from gratitude or expectation, be more obsequious to the will of the crown than those who possess great temporal inheritances, they are properly inserted into that part of the constitution, from which much or frequent resistance to the measures of government is not expected.

I acknowledge, that I perceive no sufficient reason for exempting the persons of members of either house of parliament from arrest for debt. The counsels or suffrage of a single senator, especially of one who in the management

of his own affairs may justly be suspected of a want of prudence or honesty, can seldom be so necessary to those of the public, as to justify a departure from that wholesome policy, by which the laws of a commercial state punish and stigmatise insolvency. But whatever reason may be pleaded for their *personal* immunity, when this privilege of parliament is extended to domestics and retainers, or when it is permitted to impede or delay the course of judicial proceedings, it becomes an absurd sacrifice of equal justice to imaginary dignity.

There is nothing in the British constitution so remarkable, as the irregularity of the popular representation. The House of Commons consists of five hundred and forty-eight members, of whom two hundred are elected by seven thousand constituents; so that a majority of these seven thousand, without any reasonable title to superior weight or influence in the state, may, under certain circumstances, decide a question against the opinion of as many millions. Or to place the same object in another point of view: If my estate be situated in one county of the kingdom, I possess the ten thousandth part of a single representative; if in another, the thou-

sandth; if in a particular district, I may be one in twenty who choose two representatives; if in a still more favoured spot, I may enjoy the right of appointing two myself. If I have been born, or dwell, or have served an apprenticeship in one town, I am represented in the national assembly by two deputies, in the choice of whom I exercise an actual and sensible share of power; if accident has thrown my birth, or habitation, or service, into another town, I have no representative at all, nor more power or concern in the election of those who make the laws by which I am governed, than if I was a subject of the Grand Signior:—and this partiality subsists without any pretence whatever of merit or of propriety, to justify the preference of one place to another. Or, thirdly, to describe the state of national representation as it exists, in reality, it may be affirmed, I believe, with truth, that about one half of the House of Commons obtain their seats in that assembly by the election of the people, the other half by purchase, or by the denomination of single proprietors of great estates.

This is a flagrant incongruity in the constitution; but it is one of those objections which strike most forcibly at first sight. The effect of all reasoning upon the subject

is to diminish the first impression: on which account it deserves the more attentive examination, that we may be assured, before we adventure upon a reformation, that the magnitude of the evil justifies the danger of the experiment. In a few remarks that follow, we would be understood, in the first place, to decline all conference with those who wish to alter the form of government of these kingdoms. The reformers with whom we have to do, are they, who, whilst they change this part of the system, would retain the rest. If any Englishman expect more happiness to his country under a republic, he may very consistently recommend a new-modelling of elections to parliament; because, if the King and House of Lords were laid aside, the present disproportionate representation would produce nothing but a confused and ill-digested oligarchy. In like manner we wave a controversy with those writers who insist upon representation as a *natural* right*; we

* If this right be *natural*, no doubt it must be equal; and the right, we may add, of one sex, as well as of the other. Whereas every plan of representation, that we have heard of, begins by excluding the votes of women; thus cutting off, at a single stroke, one half of the public from a right which is asserted to be inherent in all; a right too, as some represent it, not only universal, but unalienable, and indefeasible, and imprescriptible.

consider it so far only as a right at all, as it conduces to public utility; that is, as it contributes to the establishment of good laws, or as it secures to the people the just administration of these laws. These effects depend upon the disposition and abilities of the national counsellors. Wherefore, if men the most likely by their qualifications to know and to promote the public interest, be actually returned to parliament, it signifies little who return them. If the properest persons be elected, what matters it by whom they are elected? At least, no prudent statesman would subvert long established or even settled rules of representation, without a prospect of procuring wiser or better representatives. This then being well observed, let us, before we seek to obtain any thing more, consider duly what we already have. We *have* a House of Commons composed of five hundred and forty-eight members, in which number are found the most considerable landholders and merchants of the kingdom; the heads of the army, the navy, and the law; the occupiers of great offices in the state; together with many private individuals, eminent by their knowledge, eloquence, or activity. Now, if the country be not safe in such hands, in

whose may it confide its interests? If such a number of such men be liable to the influence of corrupt motives, what assembly of men will be secure from the same danger? Does any new scheme of representation promise to collect together more wisdom, or to produce firmer integrity? In this view of the subject, and attending not to ideas of order and proportion (of which many minds are much enamoured), but to effects alone, we may discover just excuses for those parts of the present representation, which appear to a hasty observer most exceptionable and absurd. It should be remembered, as a maxim extremely applicable to this subject, that no order or assembly of men whatever can long maintain their place and authority in a mixed government, of which the members do not individually possess a respectable share of personal importance. Now whatever may be the defects of the present arrangement, it infallibly secures a great weight of property to the House of Commons, by rendering many seats in that house accessible to men of large fortunes, and to such men alone. By which means those characters are engaged in the defence of the separate rights and interests of this branch of the legislature, that

are best able to support its claims. The constitution of most of the small boroughs, especially the burgage tenure, contributes, though undesignedly, to the same effect: for, the appointment of the representatives we find commonly annexed to certain great inheritances. Elections purely popular are in this respect uncertain: in times of tranquillity, the natural ascendancy of wealth will prevail: but when the minds of men are inflamed by political dissensions, this influence often yields to more impetuous motives.—The variety of tenures and qualifications, upon which the right of voting is founded, appears to me a recommendation of the mode which now subsists, as it tends to introduce into parliament a corresponding mixture of characters and professions. It has been long observed that conspicuous abilities are most frequently found with the representatives of small boroughs. And this is nothing more than what the laws of human conduct might teach us to expect: when such boroughs are set to sale, those men are likely to become purchasers, who are enabled by their talents to make the best of their bargain: when a seat is not sold, but given by the opulent proprietor of a burgage tenure, the patron finds

his own interest consulted, by the reputation and abilities of the member whom he nominates. If certain of the nobility hold the appointment of some part of the House of Commons, it serves to maintain that alliance between the two branches of the legislature, which no good citizen would wish to see dissevered: it helps to keep the government of the country in the House of Commons, in which it would not perhaps long continue to reside, if so powerful and wealthy a part of the nation as the peerage compose, were excluded from all share and interest in its constitution. If there be a few boroughs so circumstanced as to lie at the disposal of the crown, whilst the number of such is known and small, they may be tolerated with little danger. For where would be the impropriety or the inconveniency, if the king at once should nominate a limited number of his servants to seats in parliament; or, what is the same thing, if seats in parliament were annexed to the possession of certain of the most efficient and responsible offices in the state? The present representation, after all these deductions, and under the confusion in which it confessedly lies, is still in such a degree popular, or rather the representatives are so

connected with the mass of the community by a society of interests and passions, that the will of the people, when it is determined, permanent, and general, almost always at length prevails.

Upon the whole, in the several plans which have been suggested, of an equal or a reformed representation, it will be difficult to discover any proposal that has a tendency to throw more of the business of the nation into the House of Commons, or to collect a set of men more fit to transact that business, or in general more interested in the national happiness and prosperity. One consequence, however, may be expected from these projects, namely, "less flexibility to the influence of "the crown." And since the diminution of this influence is the declared and perhaps the sole design of the various schemes that have been produced, whether for regulating the elections, contracting the duration, or for purifying the constitution of parliament by the exclusion of placemen and pensioners; it is obvious to remark, that the more apt and natural, as well as the more safe and quiet way of attaining the same end, would be by a direct reduction of the patronage of the crown, which might be effected to a certain

extent without hazarding farther consequences. Superfluous and exorbitant emoluments of office may not only be suppressed for the present; but provisions of law be devised, which should for the future restrain within certain limits the number and value of the offices in the donation of the king.

But whilst we dispute concerning different schemes of reformation, all directed to the same end, a previous doubt occurs in the debate, whether the end itself be good, or safe;—whether the influence so loudly complained of, can be destroyed, or even much diminished, without danger to the state. Whilst the zeal of some men beholds this influence with a jealousy, which nothing but its entire abolition can appease, many wise and virtuous politicians deem a considerable portion of it to be as necessary a part of the British constitution, as any other ingredient in the composition;—to be that, indeed, which gives cohesion and solidity to the whole. Were the measures of government, say they, opposed from nothing but principle, government ought to have nothing but the rectitude of its measures to support them: but since opposition springs from other motives, government must possess an influence to coun-

teract these motives; to produce, not a bias of the passions, but a neutrality;—it must have some weight to cast into the scale, to set the balance even. It is the nature of power, always to press upon the boundaries which confine it. Licentiousness, faction, envy, impatience of control or inferiority; the secret pleasure of mortifying the great, or the hope of dispossessing them; a constant willingness to question and thwart whatever is dictated or even proposed by another; a disposition common to all bodies of men, to extend the claims and authority of their orders; above all, that love of power, and of showing it, which resides more or less in every human breast, and which, in popular assemblies, is inflamed, like every other passion, by communication and encouragement: these motives, added to private designs and resentments, cherished also by popular acclamation, and operating upon the great share of power already possessed by the House of Commons, might induce a majority, or at least a large party of men in that assembly, to unite in endeavouring to draw to themselves the whole government of the state: or, at least, so to obstruct the conduct of public affairs, by a wanton and perverse opposition,

as to render it impossible for the wisest statesmen to carry forwards the business of the nation with success or satisfaction.

Some passages of our national history afford grounds for these apprehensions.—Before the accession of James the First, or, at least, during the reigns of his three immediate predecessors, the government of England was a government by force; that is, the king carried his measures in parliament by *intimidation*. A sense of personal danger kept the members of the House of Commons in subjection. A conjunction of fortunate causes delivered, at last, the parliament and nation from slavery. That overbearing system, which had declined in the hands of James, expired early in the reign of his son. After the restoration, there succeeded in its place, and since the revolution has been methodically pursued, the more successful expedient of *influence*. Now, we remember what passed between the loss of terror, and the establishment of influence. The transactions of that interval, whatever we may think of their occasion or effect, no friend of regal government would wish to see revived.—But the affairs of this kingdom afford a more recent attestation to the same doctrine. In the British

colonies of North America, the late assemblies possessed much of the power and constitution of our House of Commons. The king and government of Great Britain held no patronage in the country, which could create attachment and influence sufficient to counteract that restless arrogating spirit, which, in popular assemblies, when left to itself, will never brook an authority that checks and interferes with its own. To this cause, excited perhaps by some unseasonable provocations, we may attribute, as to their true and proper original, (we will not say the misfortunes, but) the changes that have taken place in the British empire. The admonition which such examples suggest, will have its weight with those who are content with the general frame of the English constitution; and who consider stability amongst the first perfections of any government.

We protest, however, against any construction, by which what is here said shall be attempted to be applied to the justification of bribery, or of any clandestine reward or solicitation whatever. The very secrecy of such negotiations confesses or begets a consciousness of guilt: which when the mind is once taught to endure without uneasiness,

the character is prepared for every compliance: and there is the greater danger in these corrupt practices, as the extent of their operation is unlimited and unknown. Our apology relates solely to that influence, which results from the acceptance or expectation of public preferments. Nor does the influence, which we defend, require any sacrifice of personal probity. In political, above all other subjects, the arguments, or rather the conjectures, on each side of the question, are often so equally poised, that the wisest judgements may be held in suspense: these I call subjects of *indifference*. But again; when the subject is not *indifferent* in itself, it will appear such to a great part of those to whom it is proposed, for want of information, or reflection, or experience, or of capacity to collect and weigh the reasons by which either side is supported. These are subjects of *apparent indifference*. This indifference occurs still more frequently in personal contests; in which we do not often discover any reason of public utility for the preference of one competitor to another. These cases compose the province of influence: that is, the decision in these cases will inevitably be determined by influence of some sort or other.

The only doubt is, what influence shall be admitted. If you remove the influence of the crown, it is only to make way for influence from a different quarter. If motives of expectation and gratitude be withdrawn, other motives will succeed in their place, acting probably in an opposite direction, but equally irrelative and external to the proper merits of the question. There exist, as we have seen, passions in the human heart, which will always make a strong party against the executive power of a mixed government. According as the disposition of parliament is friendly or adverse to the recommendation of the crown in matters which are really or apparently indifferent, as indifference hath been now explained, the business of the empire will be transacted with ease and convenience, or embarrassed with endless contention and difficulty. Nor is it a conclusion founded in justice, or warranted by experience, that, because men are induced by views of interest to yield their consent to measures concerning which their judgement decides nothing, they may be brought by the same influence to act in deliberate opposition to knowledge and duty. Whoever reviews the operations of government in this country

since the revolution, will find few even of the most questionable measures of administration, about which the best-instructed judgement might not have doubted at the time; but of which he may affirm with certainty, they were *indifferent* to the greatest part of those who concurred in them. From the success, or the facility, with which they who dealt out the patronage of the crown carried measures like these, ought we to conclude, that a similar application of honours and emoluments would procure the consent of parliaments to counsels evidently detrimental to the common welfare? Is there not, on the contrary, more reason to fear, that the prerogative, if deprived of influence, would not be long able to support itself? For when we reflect upon the power of the House of Commons to extort a compliance with its resolutions from the other parts of the legislature; or to put to death the constitution by a refusal of the annual grants of money to the support of the necessary functions of government;—when we reflect also what motives there are, which, in the vicissitudes of political interests and passions, may one day arm and point this power against the executive magistrate; when we attend to these considerations, we

shall be led perhaps to acknowledge, that there is not more of paradox than of truth in that important, but much-decried apophthegm, "that an independent parliament is "incompatible with the existence of the mon-"archy."

CHAPTER VIII.

OF THE ADMINISTRATION OF JUSTICE.

THE first maxim of a free state is, that the laws be made by one set of men, and administered by another; in other words, that the legislative and judicial characters be kept separate. When these offices are united in the same person or assembly, particular laws are made for particular cases, springing oftentimes from partial motives, and directed to private ends: whilst they are kept separate, general laws are made by one body of men, without foreseeing whom they may affect; and, when made, must be applied by the other, let them affect whom they will.

For the sake of illustration, let it be supposed, in this country, either that, parliaments being laid aside, the courts of West-

minster-Hall made their own laws; or that the two houses of parliament, with the King at their head, tried and decided causes at their bar; it is evident, in the first place, that the decisions of such a judicature would be so many laws; and in the second place, that, when the parties and the interests to be affected by the law were known, the inclinations of the law-makers would inevitably attach on one side or the other; and that where there were neither any fixed rules to regulate their determinations, nor any superior power to control their proceedings, these inclinations would interfere with the integrity of public justice. The consequence of which must be, that the subjects of such a constitution would live either without any constant laws, that is, without any known pre-established rules of adjudication whatever; or under laws made for particular persons, and partaking of the contradictions and iniquity of the motives to which they owed their origin.

Which dangers, by the division of the legislative and judicial functions, are in this country effectually provided against. Parliament knows not the individuals upon whom its acts will operate; it has no cases or par-

ties before it; no private designs to serve: consequently, its resolutions will be suggested by the consideration of universal effects and tendencies, which always produces impartial, and commonly advantageous regulations. When laws are made, courts of justice, whatever be the disposition of the judges, must abide by them; for, the legislative being necessarily the supreme power of the state, the judicial and every other power is accountable to that: and it cannot be doubted but that the persons who possess the sovereign authority of government, will be tenacious of the laws which they themselves prescribe, and sufficiently jealous of the assumption of dispensing and legislative power by any others.

This fundamental rule of civil jurisprudence is violated in the case of acts of attainder or confiscation, in bills of pains and penalties, and in all *ex post facto* laws whatever, in which parliament exercises the double office of legislature and judge. And whoever either understands the value of the rule itself, or collects the history of those instances in which it has been invaded, will be induced, I believe, to acknowledge, that it had been wiser and safer never to have departed from it

it. He will confess, at least, that nothing but the most manifest and immediate peril of the commonwealth will justify a repetition of these dangerous examples. If the laws in being do not punish an offender, let him go unpunished; let the legislature, admonished of the defect of the laws, provide against the commission of future crimes of the same sort. The escape of one delinquent can never produce so much harm to the community as may arise from the infraction of a rule upon which the purity of public justice, and the existence of civil liberty, essentially depend.

The next security for the impartial administration of justice, especially in decisions to which government is a party, is the independency of the judges. As protection against every illegal attack upon the rights of the subject by the servants of the crown is to be sought for from these tribunals, the judges of the land become not unfrequently the arbitrators between the king and the people, on which account they ought to be independent of either; or, what is the same thing, equally dependent upon both; that is, if they be appointed by the one, they should be removable only by the other. This was the policy which dictated that memorable

improvement in our constitution, by which the judges, who before the revolution held their offices during the pleasure of the king, can now be deprived of them only by an address from both houses of parliament; as the most regular, solemn, and authentic way, by which the dissatisfaction of the people can be expressed. To make this independency of the judges complete, the public salaries of their office ought not only to be certain both in amount and continuance, but so liberal as to secure their integrity from the temptation of secret bribes; which liberality will answer also the further purpose of preserving their jurisdiction from contempt, and their characters from suspicion; as well as of rendering the office worthy of the ambition of men of eminence in their profession.

A third precaution to be observed in the formation of courts of justice is, that the number of the judges be small. For, beside that the violence and tumult inseparable from large assemblies are inconsistent with the patience, method, and attention requisite in judicial investigations; beside that all passions and prejudices act with augmented force upon a collected multitude: beside these objections, judges, when they are nu-

merous, *divide* the shame of an unjust determination; they shelter themselves under one another's example; each man thinks his own character hid in the crowd: for which reason, the judges ought always to be so few, as that the conduct of each may be conspicuous to public observation; that each may be responsible in his separate and particular reputation for the decisions in which he concurs. The truth of the above remark has been exemplified in this country, in the effects of that wise regulation which transferred the trial of parliamentary elections from the House of Commons at large to a select committee of that house, composed of thirteen members. This alteration, simply by reducing the number of the judges, and, in consequence of that reduction, exposing the judicial conduct of each to public animadversion, has given to a judicature, which had been long swayed by interest and solicitation, the solemnity and virtue of the most upright tribunals.—I should prefer an even to an odd number of judges, and four to almost any other number: for in this number, beside that it sufficiently consults the idea of separate responsibility, nothing can be decided but by a majority of three to one: and when we consider that every decision establishes a perpetual prece-

dent, we shall allow that it ought to proceed from an authority not less than this. If the court be equally divided, nothing is done; things remain as they were; with some inconveniency, indeed, to the parties, but without the danger to the public of a hasty precedent.

A fourth requisite in the constitution of a court of justice, and equivalent to many checks upon the discretion of judges, is, that its proceedings be carried on in public, *apertis foribus*; not only before a promiscuous concourse of by-standers, but in the audience of the whole profession of the Law. The opinion of the Bar concerning what passes, will be impartial; and will commonly guide that of the public. The most corrupt judge will fear to indulge his dishonest wishes in the presence of such an assembly: he must encounter, what few can support, the censure of his equals and companions, together with the indignation and reproaches of his country.

Something is also gained to the public by appointing two or three courts of concurrent jurisdiction, that it may remain in the option of the suitor to which he will resort. By this means a tribunal which may happen to be occupied by ignorant or suspected judges,

will be deserted for others that possess more of the confidence of the nation.

But, lastly, if several courts, co-ordinate to and independent of each other, subsist together in the country, it seems necessary that the appeals from all of them should meet and terminate in the same judicature; in order that one supreme tribunal, by whose final sentence all others are bound and concluded, may superintend and preside over the rest. This constitution is necessary for two purposes:—to preserve an uniformity in the decisions of inferior courts, and to maintain to each the proper limits of its jurisdiction. Without a common superior, different courts might establish contradictory rules of adjudication, and the contradiction be final and without remedy; the same question might receive opposite determinations, according as it was brought before one court or another, and the determination in each be ultimate and irreversible. A common appellant jurisdiction, prevents or puts an end to this confusion. For when the judgements upon appeals are consistent (which may be expected, whilst it is the same court which is at last resorted to), the different courts, from which the appeals are brought, will be

reduced to a like consistency with one another. Moreover, if questions arise between courts independent of each other, concerning the extent and boundaries of their respective jurisdiction, as each will be desirous of enlarging its own, an authority which both acknowledge can alone adjust the controversy. Such a power, therefore, must reside somewhere, lest the rights and repose of the country be distracted by the endless opposition and mutual encroachments of its courts of justice.

There are two kinds of judicature; the one where the office of the judge is permanent in the same person, and consequently where the judge is appointed and known long before the trial; the other, where the judge is determined by lot at the time of the trial, and for that turn only. The one may be called a *fixed*, the other a *casual* judicature. From the former may be expected those qualifications which are preferred and sought for in the choice of judges, and that knowledge and readiness which result from experience in the office. But then, as the judge is known beforehand, he is accessible to the parties; there exists a possibility of secret management and undue practices; or, if

contests between the crown and the subject, the judge appointed by the crown may be suspected of partiality to his patron, or of entertaining inclinations favourable to the authority from which he derives his own. The advantage attending the second kind of judicature, is indifferency; the defect, the want of that legal science which produces uniformity and justice in legal decisions. The construction of English courts of law, in which causes are tried by a jury, with the assistance of a judge, combines the two species with peculiar success. This admirable contrivance unites the wisdom of a fixed with the integrity of a casual judicature; and avoids, in a great measure, the inconveniencies of both. The judge imparts to the jury the benefit of his erudition and experience; the jury, by their disinterestedness, check any corrupt partialities which previous application may have produced in the judge. If the determination was left to the judge, the party might suffer under the superior interest of his adversary: if it was left to an uninstructed jury, his rights would be in still greater danger, from the ignorance of those who were to decide upon them. The present wise admixture of chance and choice in

the constitution of the court in which his cause is tried, guards him equally against the fear of injury from either of these causes.

In proportion to the acknowledged excellency of this mode of trial, every deviation from it ought to be watched with vigilance, and admitted by the legislature with caution and reluctance. Summary convictions before justices of the peace, especially for offences against the game-laws; courts of conscience; extending the jurisdiction of courts of equity; urging too far the distinction between questions of law and matters of fact; —are all so many infringements upon this great charter of public safety.

Nevertheless, the trial by jury is sometimes found inadequate to the administration of equal justice. This imperfection takes place chiefly in disputes in which some popular passion or prejudice intervenes; as where a particular order of men advance claims upon the rest of the community, which is the case of the clergy contending for tithes; or where an order of men are obnoxious by their profession, as are officers of the revenue, bailiffs, bailiffs' followers, and other low ministers of the law; or where one of the parties has an interest in common with the general interest,

of the jurors, and that of the other is opposed to it, as in contests between landlords and tenants, between lords of manors and the holders of estates under them; or, lastly, where the minds of men are inflamed by political dissensions or religious hatred. These prejudices act most powerfully upon the common people; of which order, juries are made up. The force and danger of them are also increased by the very circumstance of taking juries out of the county in which the subject of dispute arises. In the neighbourhood of the parties, the cause is often prejudged: and these secret decisions of the mind proceed commonly more upon sentiments of favour or hatred;—upon some opinion concerning the sect, family, profession, character, connexions, or circumstances of the parties,—than upon any knowledge or discussion of the proper merits of the question. More exact justice would, in many instances, be rendered to the suitors, if the determination were left entirely to the judges; provided we could depend upon the same purity of conduct, when the power of these magistrates was enlarged, which they have long manifested in the exercise of a mixed and restrained authority. But this is an ex-

periment too big with public danger to be hazarded. The effects, however, of some local prejudices, might be safely obviated by a law empowering the court in which the action is brought, to send the cause to trial in a distant county; the expenses attending the change of place always falling upon the party who applied for it.

There is a second division of courts of justice, which presents a new alternative of difficulties. Either one, two, or a few sovereign courts may be erected in the metropolis, for the whole kingdom to resort to; or courts of local jurisdiction may be fixed in various provinces and districts of the empire. Great, though opposite, inconveniencies attend each arrangement. If the court be remote and solemn, it becomes, by these very qualities, expensive and dilatory: the expense is unavoidably increased when witnesses, parties, and agents, must be brought to attend from distant parts of the country: and, where the whole judicial business of a large nation is collected into a few superior tribunals, it will be found impossible, even if the prolixity of forms which retards the progress of causes were removed, to give a prompt hearing to every complaint, or an immediate answer to

any. On the other hand, if, to remedy these evils, and to render the administration of justice cheap and speedy, domestic and summary tribunals be erected in each neighbourhood, the advantage of such courts will be accompanied with all the dangers of ignorance and partiality, and with the certain mischief of confusion and contrariety in their decisions. The law of England, by its circuit, or itinerary courts, contains a provision for the distribution of private justice, in a great measure relieved from both these objections. As the presiding magistrate comes into the country a stranger to its prejudices, rivalships, and connexions, he brings with him none of those attachments and regards, which are so apt to pervert the course of justice, when the parties and the judges inhabit the same neighbourhood. Again; as this magistrate is usually one of the judges of the supreme tribunals of the kingdom, and has passed his life in the study and administration of the laws, he possesses, it may be presumed, those professional qualifications which befit the dignity and importance of his station. Lastly, as both he, and the advocates who accompany him in his circuit, are employed in the business of those superior courts (to which also their proceedings are

amenable), they will naturally conduct themselves by the rules of adjudication which they have applied or learned there; and by this means maintain, what constitutes a principal perfection of civil government, one law of the land in every part and district of the empire.

Next to the constitution of courts of justice we are naturally led to consider the maxims which ought to guide their proceedings; and, upon this subject, the chief inquiry will be, how far, and for what reasons, it is expedient to adhere to former determinations; or whether it be necessary for judges to attend to any other consideration than the apparent and particular equity of the case before them. Now although to assert that precedents established by one set of judges ought to be incontrovertible by their successors in the same jurisdiction, or by those who exercise a higher, would be to attribute to the sentence of those judges all the authority we ascribe to the most solemn acts of the legislature: yet the general security of private rights, and of civil life, requires, that such precedents, especially if they have been confirmed by repeated adjudications, should not be overthrown, without a detec-

tion of manifest error, or without some imputation of dishonesty upon the court by whose judgement the question was first decided. And this deference to prior decisions is founded upon two reasons; first, that the discretion of judges may be bound down by positive rules; and, secondly, that the subject upon every occasion in which his legal interest is concerned, may know beforehand how to act, and what to expect. To set judges free from any obligation to conform themselves to the decisions of their predecessors, would be to lay open a latitude of judging with which no description of men can safely be intrusted; it would be to allow space for the exercise of those concealed partialities, which, since they cannot by any human policy be excluded, ought to be confined by boundaries and landmarks. It is in vain to allege, that the superintendency of parliament is always at hand to control and punish abuses of judicial discretion. By what rules can parliament proceed? How shall they pronounce a decision to be wrong, where there exists no acknowledged measure or standard of what is right; which, in a multitude of instances, would be the case, if prior determinations were no longer to be appealed to?

Diminishing the danger of partiality, is one thing gained by adhering to precedents; but not the principal thing. The subject of every system of laws must expect that decision in his own case, which he knows that others have received in cases similar to his. If he expect not this, he can expect nothing. There exists no other rule or principle of reasoning, by which he can foretell, or even conjecture, the event of a judicial contest. To remove therefore the grounds of this expectation, by rejecting the force and authority of precedents, is to entail upon the subject the worst property of slavery, —to have no assurance of his rights or knowledge of his duty. The quiet also of the country, as well as the confidence and satisfaction of each man's mind, requires uniformity in judicial proceedings. Nothing quells a spirit of litigation like despair of success; therefore nothing so completely puts an end to law-suits as a rigid adherence to known rules of adjudication. Whilst the event is uncertain, which it ever must be whilst it is uncertain whether former determinations upon the same subject will be followed or not, law-suits will be endless and innumerable: men will commonly engage in them, either from the hope of prevailing in their claims, which

the smallest chance is sufficient to encourage; or with the design of intimidating their adversary by the terrors of a dubious litigation. When justice is rendered to the parties, only half the business of a court of justice is done: the more important part of its office remains;—to put an end, for the future, to every fear, and quarrel, and expense, upon the same point; and so to regulate its proceedings, that not only a doubt once decided may be stirred no more, but that the whole train of law-suits, which issue from one uncertainty, may die with the parent question. Now, this advantage can be attained only by considering each decision as a direction to succeeding judges. And it should be observed, that every departure from former determinations, especially if they have been often repeated or long submitted to, shakes the stability of all legal title. It is not fixing a point anew; it is leaving every thing unfixed. For by the same stretch of power by which the present race of judges take upon them to contradict the judgement of their predecessors, those who try the question next, may set aside theirs.

From an adherence however to precedents, by which so much is gained to the public,

two consequences arise which are often lamented; the hardship of particular determinations, and the intricacy of the law as a science. To the first of these complaints, we must apply this reflection:—"That uniformity is of more importance than equity, in "proportion as a general uncertainty would "be a greater evil than particular injustice." The second is attended with no greater inconveniency than that of erecting the practice of the law into a separate profession: which this reason, we allow, makes necessary; for if we attribute so much authority to precedents, it is expedient that they be known, in every cause, both to the advocates and to the judge: this knowledge cannot be general, since it is the fruit oftentimes of laborious research, or demands a memory stored with long-collected erudition.

To a mind revolving upon the subject of human jurisprudence, there frequently occurs this question:—Why, since the maxims of natural justice are few and evident, do there arise so many doubts and controversies in their application? Or, in other words, how comes it to pass, that although the principles

of the law of nature be simple and for the most part sufficiently obvious, there should exist nevertheless, in every system of municipal laws, and in the actual administration of relative justice, numerous uncertainties and acknowledged difficulty? Whence, it may be asked, so much room for litigation, and so many subsisting disputes, if the rules of human duty be neither obscure nor dubious? If a system of morality, containing both the precepts of revelation, and the deductions of reason, may be comprised within the compass of one moderate volume; and the moralist be able, as he pretends, to describe the rights and obligations of mankind, in all the different relations they may hold to one another; what need of those codes of positive and particular institutions, of those tomes of statutes and reports, which require the employment of a long life even to peruse? And this question is immediately connected with the argument which has been discussed in the preceding paragraph: for, unless there be found some greater uncertainty in the law of nature, or what may be called natural equity, when it comes to be applied to real cases and to actual adjudication, than what appears in the

rules and principles of the science, as delivered in the writings of those who treat of the subject, it were better that the determination of every cause should be left to the conscience of the judge, unfettered by precedents and authorities; since the very purpose, for which these are introduced, is to give a certainty to judicial proceedings, which such proceedings would want without them.

Now to account for the existence of so many sources of litigation, notwithstanding the clearness and perfection of natural justice, it should be observed, in the first place, that treatises of morality always suppose facts to be ascertained; and not only so, but the intention likewise of the parties to be known and laid bare. For example, when we pronounce that promise sought to be fulfilled in that sense in which the promiser apprehended, at the time of making the promise, the other party received and understood it; the apprehension of one side, and the expectation of the other, must be discovered, before this rule can be reduced to practice, or applied to the determination of any actual dispute. Wherefore the discussion of facts which the moralist supposes to be settled, the discovery of intentions which he presumes to be

known, still remain to exercise the inquiry of courts of justice. And as these facts and intentions are often to be inferred, or rather conjectured, from obscure indications, from suspicious testimony, or from a comparison of opposite and contending probabilities, they afford a never-failing supply of doubt and litigation. For which reason, as hath been observed in a former part of this work, the science of morality is to be considered rather as a direction to the parties, who are conscious of their own thoughts, and motives, and designs, to which consciousness the teacher of morality constantly appeals; than as a guide to the judge, or to any third person, whose arbitration must proceed upon rules of evidence, and maxims of credibility, with which the moralist has no concern.

Secondly; there exist a multitude of cases, in which the law of nature, that is, the law of public expediency, prescribes nothing, except that some certain rule be adhered to, and that the rule actually established be preserved; it either being indifferent what rule obtains, or, out of many rules, no one being so much more advantageous than the rest, as to recompense the inconveniency of an alteration. In all such cases, the law of nature

sends us to the law of the land. She directs that either some fixed rule be introduced by an act of the legislature, or that the rule which accident, or custom, or common consent, hath already established, be steadily maintained. Thus, in the descent of lands, or the inheritance of personals from intestate proprietors, whether the kindred of the grandmother, or of the great-grandmother, shall be preferred in the succession; whether the degrees of consanguinity shall be computed through the common ancestor, or from him; whether the widow shall take a third or a moiety of her husband's fortune; whether sons shall be preferred to daughters, or the elder to the younger; whether the distinction of age shall be regarded amongst sisters, as well as between brothers; in these, and in a great variety of questions which the same subject supplies, the law of nature determines nothing. The only answer she returns to our inquiries is, that some certain and general rule be laid down by public authority; be obeyed when laid down; and that the quiet of the country be not disturbed, nor the expectation of heirs frustrated by capricious innovations. This silence or neutrality of the law of nature,

which we have exemplified in the case of intestacy, holds concerning a great part of the questions that relate to the right or acquisition of property. Recourse then must necessarily be had to statutes, or precedents, or usage, to fix what the law of nature has left loose. The interpretation of these statutes, the search after precedents, the investigation of customs, compose therefore an unavoidable, and at the same time a large and intricate portion of forensic business. Positive constitutions or judicial authorities are, in like manner, wanted to give precision to many things which are in their nature *indeterminate*. The age of legal discretion; at what time of life a person shall be deemed competent to the performance of any act which may bind his property; whether at twenty, or twenty-one, or earlier or later, or at some point of time between these years, can only be ascertained by a positive rule of the society to which the party belongs. The line has not been drawn by nature;—the human understanding advancing to maturity by insensible degrees, and its progress varying in different individuals. Yet it is necessary, for the sake of mutual security, that a precise age be fixed, and that what is fixed be known

to all. It is on these occasions that the intervention of law supplies the inconstancy of nature. Again, there are other things which are perfectly *arbitrary*, and capable of no certainty but what is given to them by positive regulation. It is fit that a limited time should be assigned to defendants, to plead to the complaints alleged against them; and also that the default of pleading within a certain time should be taken for a confession of the charge: but to how many days or months that term should be extended, though necessary to be known with certainty, cannot be known at all by any information which the law of nature affords. And the same remark seems applicable to almost all those rules of proceeding, which constitute what is called the practice of the court; as they cannot be traced out by reasoning, they must be settled by authority.

Thirdly; in contracts, whether express or implied, which involve a great number of conditions; as in those which are entered into between masters and servants, principals and agents; many also of merchandise, or for works of art; in some likewise which relate to the negotiation of money or bills, or to the acceptance of credit or security: the ori-

ginal design and expectation of the parties was, that both sides should be guided by the course and custom of the country in transactions of the same sort. Consequently, when these contracts come to be disputed, natural justice can only refer to that custom. But as such customs are not always sufficiently uniform or notorious, but often to be collected from the production and comparison of instances and accounts repugnant to one another; and each custom being only that, after all, which amongst a variety of usages seems to predominate, we have *here* also ample room for doubt and contest.

Fourthly; as the law of nature, founded in the very construction of human society, which is formed to endure through a series of perishing generations, requires that the just engagements a man enters into should continue in force beyond his own life; it follows, that the private rights of persons frequently depend upon what has been transacted, in times remote from the present, by their ancestors or predecessors, by those under whom they claim, or to whose obligations they have succeeded. Thus the questions which usually arise between lords of manors and their tenants, between the king and those

who claim royal franchises, or between them and the persons affected by these franchises, depend upon the terms of the original grant. In like manner, every dispute concerning tithes, in which an exemption or composition is pleaded, depends upon the agreement which took place between the predecessor of the claimant and the ancient owner of the land. The appeal to these grants and agreements is dictated by natural equity, as well as by the municipal law: but concerning the existence, or the conditions, of such old covenants, doubts will perpetually occur, to which the law of nature affords no solution. The loss or decay of records, the perishableness of living memory, the corruption and carelessness of tradition, all conspire to multiply uncertainties upon this head; what cannot be produced or proved, must be left to loose and fallible presumption. Under the same head may be included another topic of altercation;—the tracing out of boundaries, which time, or neglect, or unity of possession, or mixture of occupation, has confounded or obliterated. To which should be added, a difficulty which often presents itself in disputes concerning rights of *way*, both public and private, and of those easements which

one man claims in another man's property; namely, that of distinguishing, after a lapse of years, the use of an indulgence from the exercise of a right

Fifthly; the quantity or extent of an injury, even when the cause and author of it are known, is often dubious and undefined. If the injury consist in the loss of some specific right, the value of the right measures the amount of the injury: but what a man may have suffered in his person, from an assault; in his reputation, by slander; or in the comfort of his life, by the seduction of a wife or daughter; or what sum of money shall be deemed a reparation for damages such as these, cannot be ascertained by any rules which the law of nature supplies. The law of nature commands, that reparation be made; and adds to her command, that, when the aggressor and the sufferer disagree, the damage be assessed by authorised and indifferent arbitrators. Here then recourse must be had to courts of law, not only with the permission, but in some measure by the direction, of natural justice.

Sixthly; when controversies arise in the interpretation of written laws, they for the most part arise upon some contingency which

the composer of the law did not foresee or think of. In the adjudication of such cases, this dilemma presents itself; if the laws be permitted to operate only upon the cases which were actually contemplated by the law-makers, they will always be found defective; if they be extended to every case to which the reasoning, and spirit, and expediency of the provision seem to belong, without any farther evidence of the intention of the legislature, we shall allow to the judges a liberty of applying the law, which will fall very little short of the power of making it. If a literal construction be adhered to, the law will often fail of its end: if a loose and vague exposition be admitted, the law might as well have never been enacted; for, this licence will bring back into the subject all the discretion and uncertainty which it was the design of the legislature to take away. Courts of justice are, and always must be, embarrassed by these opposite difficulties; and, as it never can be known beforehand, in what degree either consideration may prevail in the mind of the judge, there remains an unavoidable cause of doubt, and a place for contention.

Seventhly; the deliberations of courts of

justice upon every *new* question, are encumbered with additional difficulties, in consequence of the authority which the judgement of the court possesses, as a precedent to future judicatures; which authority appertains not only to the conclusions the court delivers, but to the principles and arguments upon which they are built. The view of this effect makes it necessary for a judge to look beyond the case before him; and, beside the attention he owes to the truth and justice of the cause between the parties, to reflect whether the principles, and maxims, and reasoning, which he adopts and authorises, can be applied with safety to all cases which admit of a comparison with the present. The decision of the cause, were the effects of the decision to stop there, might be easy: but the consequence of establishing the principle, which such a decision assumes, may be difficult, though of the utmost importance, to be foreseen and regulated.

Finally; after all the certainty and rest that can be given to points of law, either by the interposition of the legislature or the authority of precedents, one principal source of disputation, and into which indeed the greater part of legal controversies may be resolv-

ed, will remain still, namely, "the compe-
"tition of opposite analogies." When a point of law has been once adjudged, neither that question, nor any which completely, and in all its circumstances, corresponds with *that*, can be brought a second time into dispute: but questions arise, which resemble this only indirectly and in part, in certain views and circumstances, and which may seem to bear an equal or a greater affinity to other adjudged cases; questions which can be brought within any affixed rule only by analogy, and which hold a relation by analogy to different rules. It is by the urging of the different analogies that the contention of the bar is carried on: and it is in the comparison, adjustment, and reconciliation of them with one another; in the discerning of such distinctions, and in the framing of such a determination, as may either save the various rules alleged in the cause, or, if that be impossible, may give up the weaker analogy to the stronger, that the sagacity and wisdom of the court are seen and exercised. Amongst a thousand instances of this, we may cite one of general notoriety, in the contest that has lately been agitated concerning literary property. The personal industry, which an au-

thor expends upon the composition of his work, bears so near a resemblance to that, by which every other kind of property is earned, or deserved, or acquired, or rather there exists such a correspondency between what is created by the study of a man's mind, and the production of his labour in any other way of applying it, that he seems entitled to the same exclusive, assignable, and perpetual right in both; and that right to the same protection of law. This was the analogy contended for on one side. On the other hand, a book, as to the author's right in it, appears similar to an invention of art, as a machine, an engine, a medicine: and since the law permits these to be copied, or imitated, except where an exclusive use or sale is reserved to the inventor by patent, the same liberty should be allowed in the publication and sale of books. This was the analogy maintained by the advocates of an open trade. And the competition of these opposite analogies constituted the difficulty of the case, as far as the same was argued, or adjudged, upon principles of common law.—One example may serve to illustrate our meaning: but whoever takes up a volume of reports, will find most of the arguments it

contains, capable of the same analysis: although the analogies, it must be confessed, are sometimes so entangled as not to be easily unravelled, or even perceived.

Doubtful and obscure points of law are not however nearly so numerous as they are apprehended to be. Out of the multitude of causes which, in the course of each year, are brought to trial in the metropolis, or upon the circuits, there are few in which any point is reserved for the judgement of superior courts. Yet these few contain all the doubts with which the law is chargeable: for, as to the rest, the uncertainty, as hath been shown above, is not in the law, but in the means of human information.

There are two peculiarities in the judicial constitution of this country, which do not carry with them that evidence of their propriety which recommends almost every other part of the system. The first of these is the rule, which requires that juries be *unanimous* in their verdicts. To expect that twelve men, taken by lot out of a promiscuous multitude, should agree in their opinion upon

points confessedly dubious, and upon which oftentimes the wisest judgements might be holden in suspense; or to suppose that any real *unanimity*, or change of opinion, in the dissenting jurors, could be procured by confining them until they all consented to the same verdict; bespeaks more of the conceit of a barbarous age, than of the policy which could dictate such an institution as that of juries. Nevertheless, the effects of this rule are not so detrimental, as the rule itself is unreasonable;—in criminal prosecutions, it operates considerably in favour of the prisoner; for if a juror find it necessary to surrender to the obstinacy of others, he will much more readily resign his opinion on the side of mercy than of condemnation: in civil suits, it adds weight to the direction of the judge; for when a conference with one another does not seem likely to produce, in the jury, the agreement that is necessary, they will naturally close their disputes by a common submission to the opinion delivered from the bench. However, there seems to be less of the concurrence of separate judgements in the same conclusion, consequently less assurance that the conclusion is founded in reasons of apparent truth and justice, than

if the decision were left to a plurality, or to some certain majority of voices.

The second circumstance in our constitution, which, however it may succeed in practice, does not seem to have been suggested by any intelligible fitness in the nature of the thing, is the choice that is made of the *House of Lords* as a court of appeal from every civil court of judicature in the kingdom; and the last also and highest appeal to which the subject can resort. There appears to be nothing in the constitution of that assembly; in the education, habits, character, or professions of the members who compose it; in the mode of their appointment, or the right by which they succeed to their places in it, that should qualify them for this arduous office; except, perhaps, that the elevation of their rank and fortune affords a security against the offer and influence of small bribes. Officers of the army and navy, courtiers, ecclesiastics; young men who have just attained the age of twenty-one, and who have passed their youth in the dissipation and pursuits which commonly accompany the possession or inheritance of great fortunes; country-gentlemen, occupied in the management of their estates, or in the

care of their domestic concerns and family interests; the greater part of the assembly born to their station, that is, placed in it by chance; most of the rest advanced to the peerage for services, and from motives, utterly unconnected with legal erudition:—these men compose the tribunal, to which the constitution intrusts the interpretation of her laws, and the ultimate decision of every dispute between her subjects. These are the men assigned to review judgements of law, pronounced by sages of the profession, who have spent their lives in the study and practice of the jurisprudence of their country. Such is the order which our ancestors have established. The effect only proves the truth of this maxim;—"That when a single insti-"tution is extremely dissonant from other "parts of the system to which it belongs, it "will always find some way of reconciling "itself to the analogy which governs and "pervades the rest." By constantly placing in the House of Lords some of the most eminent and experienced lawyers in the kingdom; by calling to their aid the advice of the judges, when any abstract question of law awaits their determination; by the almost implicit and undisputed deference,

which the uninformed part of the house find it necessary to pay to the learning of their colleagues, the appeal to the House of Lords becomes in fact an appeal to the collected wisdom of our supreme courts of justice; receiving indeed solemnity, but little perhaps of direction, from the presence of the assembly in which it is heard and determined.

These, however, even if real, are minute imperfections. A politician, who should sit down to delineate a plan for the dispensation of public justice, guarded against all access to influence and corruption, and bringing together the separate advantages of knowledge and impartiality, would find, when he had done, that he had been transcribing the judicial constitution of England. And it may teach the most discontented amongst us to acquiesce in the government of his country, to reflect, that the pure, and wise, and equal administration of the laws, forms the first end and blessing of social union; and that this blessing is enjoyed by him in a perfection, which he will seek in vain in any other nation of the world.

CHAPTER IX.

OF CRIMES AND PUNISHMENTS.

THE proper end of human punishment is not the satisfaction of justice, but the prevention of crimes. By the satisfaction of justice, I mean the retribution of so much pain for so much guilt; which is the dispensation we expect at the hand of God, and which we are accustomed to consider as the order of things that perfect justice dictates and requires. In what sense, or whether with truth in any sense, justice may be said to demand the punishment of offenders, I do not now inquire: but I assert, that this *demand* is not the motive or occasion of human punishment. What would it be to the magistrate, that offences went altogether unpunished, if the impunity of the offenders were followed by no danger or prejudice to the commonwealth? The fear lest the escape of the criminal should encourage him, or others by his example, to repeat the same crime, or to commit different crimes, is the sole consideration which authorises the infliction of punishment by human

laws. Now that, whatever it be, which is the cause and end of the punishment, ought undoubtedly to regulate the measure of its severity. But this cause appears to be founded, not in the guilt of the offender, but in the necessity of preventing the repetition of the offence: and hence results the reason, that crimes are not by any government punished in proportion to their guilt, nor in all cases ought to be so, but in proportion to the difficulty and the necessity of preventing them. Thus the stealing of goods privately out of a shop, may not, in its moral quality, be more criminal than the stealing of them out of a house; yet being equally necessary, and more difficult, to be prevented, the law, in certain circumstances, denounces against it a severer punishment. The crime must be prevented by some means or other; and consequently, whatever means appear necessary to this end, whether they be proportionable to the guilt of the criminal or not, are adopted rightly, because they are adopted upon the principle which alone justifies the infliction of punishment at all. From the same consideration it also follows, that punishment ought not to be employed, much less rendered severe, when the crime can be prevented

by any other means. Punishment is an evil to which the magistrate resorts only from its being necessary to the prevention of a greater. This necessity does not exist, when the end may be attained, that is, when the public may be defended from the effects of the crime, by any other expedient. The sanguinary laws which have been made against counterfeiting or diminishing the gold coin of the kingdom might be just, until the method of detecting the fraud, by weighing the money, was introduced into general usage. Since that precaution was practised, these laws have slept; and an execution under them at this day would be deemed a measure of unjustifiable severity. The same principle accounts for a circumstance, which has been often censured as an absurdity in the penal laws of this, and of most modern nations, namely, that breaches of trust are either not punished at all, or punished with less rigour than other frauds.—Wherefore is it, some have asked, that a violation of confidence, which increases the guilt, should mitigate the penalty?—This lenity, or rather forbearance, of the laws, is founded in the most reasonable distinction. A due circumspection in the choice of the persons whom

they trust; caution in limiting the extent of that trust: or the requiring of sufficient security for the faithful discharge of it, will commonly guard men from injuries of this description; and the law will not interpose its sanctions to protect negligence and credulity, or to supply the place of domestic care and prudence. To be convinced that the law proceeds entirely upon this consideration we have only to observe, that where the confidence is unadvoidable,—where no practicable vigilance could watch the offender, as in the case of theft committed by a servant in the shop or dwelling-house of his master, or upon property to which he must necessarily have access, the sentence of the law is not less severe, and its execution commonly more certain and rigorous, than if no trust at all had intervened.

It is in pursuance of the same principle, which pervades indeed the whole system of penal jurisprudence, that the facility with which any species of crimes is perpetrated has been generally deemed a reason for aggravating the punishment. Thus, sheep-stealing, horse-stealing, the stealing of cloth from tenters or bleaching-grounds, by our laws, subject the offenders to sentence of death: not

that these crimes are in their nature more heinous than many simple felonies which are punished by imprisonment or transportation, but because the property, being more exposed, requires the terror of capital punishment to protect it. This severity would be absurd and unjust, if the guilt of the offender were the immediate cause and measure of the punishment; but is a consistent and regular consequence of the supposition, that the right of punishment results from the necessity of preventing the crime: for, if this be the end proposed, the severity of the punishment must be increased in proportion to the expediency and the difficulty of attaining this end: that is, in a proportion compounded of the mischief of the crime, and of the ease with which it is executed. The difficulty of discovery is a circumstance to be included in the same consideration. It constitutes indeed, with respect to the crime, the facility of which we speak. By how much therefore the detection of an offender is more rare and uncertain, by so much the more severe must be the punishment when he is detected. Thus the writing of incendiary letters, though in itself a pernicious and alarming injury, calls for a more condign and ex-

emplary punishment, by the very obscurity with which the crime is committed.

From the justice of God, we are taught to look for a gradation of punishment exactly proportioned to the guilt of the offender: when therefore, in assigning the degrees of human punishment, we introduce considerations distinct from that guilt, and a proportion so varied by external circumstances, that equal crimes frequently undergo unequal punishments, or the less crime the greater: it is natural to demand the reason why a different measure of punishment should be expected from God, and observed by man; why that rule, which befits the absolute and perfect justice of the Deity, should not be the rule which ought to be pursued and imitated by human laws. The solution of this difficulty must be sought for in those peculiar attributes of the Divine nature, which distinguish the dispensations of Supreme Wisdom from the proceedings of human judicature. A Being whose knowledge penetrates every concealment, from the operation of whose will no art or flight can escape, and in whose hands punishment is sure, such a Being may conduct the moral government of his crea-

tion, in the best and wisest manner, by pronouncing a law that every crime shall finally receive a punishment proportioned to the guilt which it contains, abstracted from any foreign consideration whatever; and may testify his veracity to the spectators of his judgements, by carrying this law into strict execution. But when the care of the public safety is intrusted to men, whose authority over their fellow-creatures is limited by defects of power and knowledge; from whose utmost vigilance and sagacity the greatest offenders often lie hid; whose wisest precautions and speediest pursuit may be eluded by artifice or concealment; a different necessity, a new rule of proceeding, results from the very imperfection of their faculties. In their hands, the uncertainty of punishment must be compensated by the severity. The ease with which crimes are committed or concealed, must be counteracted by additional penalties and increased terrors. The very end for which human government is established, requires that its regulations be adapted to the suppression of crimes. This end, whatever it may do in the plans of Infinite Wisdom, does not, in the designation

of temporal penalties, always coincide with the proportionate punishment of guilt.

There are two methods of administering penal justice.

The first method assigns capital punishments to few offences, and inflicts it invariably.

The second method assigns capital punishments to many kinds of offences, but inflicts it only upon a few examples of each kind.

The latter of which two methods has been long adopted in this country, where, of those who receive sentence of death, scarcely one in ten is executed. And the preference of this to the former method seems to be founded in the consideration, that the selection of proper objects for capital punishment principally depends upon circumstances, which however easy to perceive in each particular case after the crime is committed, it is impossible to enumerate or define beforehand; or to ascertain however with that exactness, which is requisite in legal descriptions. Hence, although it be necessary to fix by precise rules of law the boundary on one side, that is, the limit to which the punishment may be extended; and also that no-

thing less than the authority of the whole legislature be suffered to determine that boundary, and assign these rules; yet the mitigation of punishment, the exercise of lenity, may without danger be intrusted to the executive magistrate, whose discretion will operate upon those numerous, unforeseen, mutable, and indefinite circumstances, both of the crime and the criminal, which constitute or qualify the malignity of each offence. Without the power of relaxation lodged in a living authority, either some offenders would escape capital punishment, whom the public safety required to suffer; or some would undergo this punishment, where it was neither deserved nor necessary. For if judgement of death were reserved for one or two species of crimes only (which would probably be the case if that judgement was intended to be executed without exception), crimes might occur of the most dangerous example, and accompanied with circumstances of heinous aggravation, which did not fall within *any* description of offences that the laws had made capital, and which consequently could not receive the punishment their own malignity and the public

safety required. What is worse, it would be known, beforehand, that such crimes might be committed without danger to the offender's life. On the other hand, if, to reach these possible cases, the whole class of offences to which they belong be subjected to pains of death, and no power of remitting this severity remain any where, the execution of the laws will become more sanguinary than the public compassion would endure, or than is necessary to the general security.

The law of England is constructed upon a different and a better policy. By the number of statutes creating capital offences, it sweeps into the net every crime which, under any possible circumstances, may merit the punishment of death: but, when the execution of this sentence comes to be deliberated upon, a small proportion of each class are singled out, the general character, or the peculiar aggravations of whose crimes render them fit examples of public justice. By this expedient, few actually suffer death, whilst the dread and danger of it hang over the crimes of many. The tenderness of the law cannot be taken advantage of. The life of the subject is spared as far as the necessity

of restraint and intimidation permits: yet no one will adventure upon the commission of any enormous crime, from a knowledge that the laws have not provided for its punishment. The wisdom and humanity of this design furnish a just excuse for the multiplicity of capital offences, which the laws of England are accused of creating beyond those of other countries. The charge of cruelty is answered by observing, that these laws were never meant to be carried into indiscriminate execution; that the legislature, when it establishes its last and highest sanctions, trusts to the benignity of the crown to relax their severity, as often as circumstances appear to palliate the offence, or even as often as those circumstances of aggravation are wanting, which rendered this rigorous interposition necessary. Upon this plan, it is enough to vindicate the lenity of the laws, that *some* instances are to be found in each class of capital crimes, which require the restraint of capital punishment, and that this restraint could not be applied without subjecting the whole class to the same condemnation.

There is however one species of crimes,

the making of which capital can hardly, I think, be defended even upon the comprehensive principle just now stated;—I mean that of privately stealing from the person. As every degree of force is excluded by the description of the crime, it will be difficult to assign an example, where either the amount or circumstances of the theft place it upon a level with those dangerous attempts, to which the punishment of death should be confined. It will be still more difficult to show, that, without gross and culpable negligence on the part of the sufferer, such examples can ever become so frequent, as to make it necessary to constitute a class of capital offences, of very wide and large extent.

The prerogative of pardon is properly reserved to the chief magistrate. The power of suspending the laws is a privilege of too high a nature to be committed to many hands, or to those of any inferior officer in the state. The king also can best collect the advice by which his resolutions shall be governed; and is at the same time removed at the greatest distance from the influence of private motives. But let this power be deposited where it will, the exercise of it ought to be regarded, not as a favour to be yielded

to solicitation, granted to friendship, or, least of all, to be made subservient to the conciliating or gratifying of political attachments, but as a judicial act; as a deliberation to be conducted with the same character of impartiality, with the same exact and diligent attention to the proper merits and circumstances of the case, as that which the judge upon the bench was expected to maintain and show in the trial of the prisoner's guilt. The questions, whether the prisoner be guilty, and whether, being guilty, he ought to be executed, are equally questions of public justice. The adjudication of the latter question is as much a function of magistracy, as the trial of the former. The public welfare is interested in both. The conviction of an offender should depend upon nothing but the proof of his guilt; nor the execution of the sentence upon any thing beside the quality and circumstances of his crime. It is necessary to the good order of society, and to the reputation and authority of government, that this be known and believed to be the case in each part of the proceeding. Which reflections show, that the admission of extrinsic or oblique considerations, in dispensing the power of pardon, is

a crime, in the authors and advisers of such unmerited partiality, of the same nature with that of corruption in a judge.

Aggravations which ought to guide the magistrate in the selection of objects of condign punishment, are principally these three, —repetition, cruelty, combination. The first two, it is manifest, add to every reason upon which the justice or the necessity of rigorous measures can be founded: and with respect to the last circumstance, it may be observed, that when thieves and robbers are once collected into gangs, their violence becomes more formidable, the confederates more desperate, and the difficulty of defending the public against their depredations much greater, than in the case of solitary adventurers. Which several considerations compose a distinction, that is properly adverted to, in deciding upon the fate of convicted malefactors.

In crimes, however, which are perpetrated by a multitude, or by a gang, it is proper to separate, in the punishment, the ringleader from his followers, the principal from his accomplices, and even the person who struck the blow, broke the lock, or first entered the house, from those who joined him in the fe-

lony; not so much on account of any distinction in the guilt of the offenders, as for the sake of casting an obstacle in the way of such confederacies, by rendering it difficult for the confederates to settle who shall begin the attack, or to find a man amongst their number willing to expose himself to greater danger than his associates. This is another instance in which the punishment, which expediency directs, does not pursue the exact proportion of the crime.

Injuries effected by terror and violence, are those which it is the first and chief concern of legal government to repress; because their extent is unlimited; because, no private precaution can protect the subject against them; because, they endanger life and safety, as well as property; and, lastly, because they render the condition of society wretched, by a sense of personal insecurity. These reasons do not apply to frauds which circumspection may prevent; which must wait for opportunity; which can proceed only to certain limits; and, by the apprehension of which, although the business of life be incommoded, life itself is not made miserable. The appearance of this distinction has led some humane writers to express

a wish, that capital punishments might be confined to crimes of violence.

In estimating the comparative malignancy of crimes of violence, regard is to be had, not only to the proper and intended mischief of the crime, but to the fright occasioned by the attack, to the general alarm excited by it in others, and to the consequences which may attend future attempts of the same kind. Thus, in affixing the punishment of burglary, or of breaking into dwelling-houses by night, we are to consider not only the peril to which the most valuable property is exposed by this crime, and which may be called the direct mischief of it, but the danger also of murder in case of resistance, or for the sake of preventing discovery, and the universal dread with which the silent and defenceless hours of rest and sleep must be disturbed, were attempts of this sort to become frequent: and which dread alone, even without the mischief which is the object of it, is not only a public evil, but almost of all evils the most insupportable. These circumstances place a difference between the breaking into a dwelling-house by day, and by night; which difference obtains in the punishment of the offence by the law of Moses,

and is probably to be found in the judicial codes of most countries, from the earliest ages to the present.

Of frauds, or of injuries which are effected without force, the most noxious kinds are,—forgeries, counterfeiting or diminishing of the coin, and the stealing of letters in the course of their conveyance; inasmuch as these practices tend to deprive the public of accommodations, which not only improve the conveniencies of social life, but are essential to the prosperity, and even the existence, of commerce. Of these crimes it may be said, that although they seem to affect property alone, the mischief of their operation does not terminate there. For, let it be supposed, that the remissness, or lenity of the laws should, in any country, suffer offences of this sort to grow into such a frequency, as to render the use of money, the circulation of bills, or the public conveyance of letters no longer safe or practicable; what would follow, but that every species of trade and of activity must decline under these discouragements; the sources of subsistence fail, by which the inhabitants of the country are supported; the country itself, where the intercourse of civil life was so endangered

and defective, be deserted; and that, beside the distress and poverty which the loss of employment would produce to the industrious and valuable part of existing community, a rapid depopulation must take place, each generation becoming less numerous than the last; till solitude and barrenness overspread the land; until a desolation similar to what obtains in many countries of Asia, which were once the most civilised and frequented parts of the world, succeed in the place of crowded cities, of cultivated fields, of happy and well-peopled regions? When therefore we carry forwards our views to the more distant, but not less certain, consequences of these crimes, we perceive that, though no living creature be destroyed by them, yet human life is diminished; that an offence, the particular consequence of which deprives only an individual of a small portion of his property, and which even in its general tendency seems to do nothing more than obstruct the enjoyment of certain public conveniencies, may nevertheless, by its ultimate effects, conclude in the laying waste of human existence. This observation will enable those who regard the divine rule of "*life for life, and blood for blood,*" as the

only authorised and justifiable measure of capital punishment, to perceive, with respect to the effects and quality of the actions, a greater resemblance than they suppose to exist between certain atrocious frauds, and those crimes which attack personal safety.

In the case of forgeries, there appears a substantial difference between the forging of bills of exchange, or of securities which are circulated, and of which the circulation and currency are found to serve and facilitate valuable purposes of commerce; and the forging of bonds, leases, mortgages, or of instruments which are not commonly transferred from one hand to another; because, in the former case, credit is necessarily given to the signature, and without that credit the negotiation of such property could not be carried on, nor the public utility, sought from it, be attained: in the other case, all possibility of deceit might be precluded, by a direct communication between the parties, or by due care in the choice of their agents, with little interruption to business, and without destroying, or much encumbering, the uses for which these instruments are calculated. This distinction I apprehend to be not only real, but precise enough to afford a

line of devision between forgeries, which, as the law now stands, are almost universally capital, and punished with undistinguishing severity.

Perjury is another crime of the same class and magnitude. And, when we consider what reliance is necessarily placed upon oaths; that all judicial decisions proceed upon testimony; that consequently there is not a right that a man possesses, of which false witnesses may not deprive him; that reputation, property, and life itself, lie open to the attempts of perjury; that it may often be committed without a possibility of contradiction or discovery; that the success and prevalency of this vice tend to introduce the most grievous and fatal injustice into the administration of human affairs, or such a distrust of testimony as must create universal embarrassment and confusion;—when we reflect upon these mischiefs, we shall be brought, probably, to agree with the opinion of those, who contend that perjury, in its punishment, especially that which is attempted in solemn evidence, and in the face of a court of justice, should be placed upon a level with the most flagitious frauds.

The obtaining of money by secret threats,

whether we regard the difficulty with which the crime is traced out, the odious imputations to which it may lead, or the profligate conspiracies that are sometimes formed to carry it into execution, deserves to be reckoned amongst the worst species of robbery.

The frequency of capital executions in this country, owes its necessity to three causes;—much liberty, great cities, and the want of a punishment short of death, possessing a sufficient degree of terror. And if the taking away of the life of malefactors be more rare in other countries than in ours, the reason will be found in some difference in these articles. The liberties of a free people, and still more the jealousy with which these liberties are watched, and by which they are preserved, permit not those precautions and restraints, that inspection, scrutiny, and control, which are exercised with success in arbitrary governments. For example, neither the spirit of the laws, nor of the people, will suffer the detention or confinement of suspected persons, without proofs of their guilt, which it is often impossible to obtain; nor will they allow that masters of families be obliged to record and render up a description of the strangers or inmates whom they entertain;

nor that an account be demanded, at the pleasure of the magistrate, of each man's time, employment, and means of subsistence; nor securities to be required when these accounts appear unsatisfactory or dubious; nor men to be apprehended upon the mere suggestion of idleness or vagrancy; nor to be confined to certain districts; nor the inhabitants of each district to be made responsible for one another's behaviour; nor passports to be exacted from all persons entering or leaving the kingdom: least of all will they tolerate the appearance of an armed force, or of military law; or suffer the streets and public roads to be guarded and patrolled by soldiers; or, lastly, intrust the police with such discretionary powers, as may make sure of the guilty, however they involve the innocent. These expedients, although arbitrary and rigorous, are many of them effectual: and in proportion as they render the commissions or concealment of crimes more difficult, they subtract from the necessity of severe punishment.—*Great cities* multiply crimes, by presenting easier opportunities and more incentives to libertinism, which in low life is commonly the introductory stage to other enormities; by collecting thieves

and robbers into the same neighbourhood,—which enables them to form communications and confederacies, that increase their art and courage, as well as strength and wickedness; but principally by the refuge they afford to villany, in the means of concealment, and of subsisting in secrecy, which crowded towns supply to men of every description. These temptations and facilities can only be counteracted by adding to the number of capital punishments.—But a *third* cause, which increases the frequency of capital executions in England is, a defect of the laws, in not being provided with any other punishment than that of death, sufficiently terrible to keep offenders in awe. Transportation, which is the sentence second in the order of severity, appears to me to answer the purpose of example very imperfectly: not only because exile is in reality a slight punishment to those who have neither property, nor friends, nor reputation, nor regular means of subsistence at home; and because their situation becomes little worse by their crime, than it was before they committed it; but because the punishment, whatever it be, is unobserved and unknown. A transported convict may suffer under his sentence, but his sufferings are removed from

the view of his countrymen: his misery is unseen; his condition strikes no terror into the minds of those for whose warning and admonition it was intended. This chasm in the scale of punishment produces also two farther imperfections in the administration of penal justice:—the first is, that the same punishment is extended to crimes of very different character and malignancy: the second, that punishments separated by a great interval, are assigned to crimes hardly distinguishable in their guilt and mischief.

The end of punishment is two fold;—*amendment* and *example*. In the first of these, the *reformation* of criminals, little has ever been effected, and little, I fear, is practicable. From every species of punishment that has hitherto been devised, from imprisonment and exile, from pain and infamy, malefactors return more hardened in their crimes, and more instructed. If there be any thing that shakes the soul of a confirmed villain, it is the expectation of approaching death. The horrors of this situation may cause such a wrench in the mental organs, as to give them a holding turn: and I think it probable, that many of those who are executed, would, if they were deli-

vered at the point of death, retain such a remembrance of their sensations, as might preserve them, unless urged by extreme want, from relapsing into their former crimes. But this is an experiment that, from its nature, cannot be repeated often.

Of the *reforming* punishments which have not yet been tried, none promises so much success as that of *solitary* imprisonment, or the confinement of criminals in separate apartments. This improvement augments the terror of the punishment; secludes the criminal from the society of his fellow-prisoners, in which society the worse are sure to corrupt the better; weans him from the knowledge of his companions, and from the love of that turbulent, precarious life in which his vices had engaged him; is calculated to raise up in him reflections on the folly of his choice, and to dispose his mind to such bitter and continued penitence, as may produce a lasting alteration in the principles of his conduct.

As aversion to labour is the cause from which half of the vices of low life deduce their origin and continuance, punishments ought to be contrived with a view to the conquering of this disposition. Two opposite expedients have been recommended for this

purpose; the one, solitary confinement with hard labour; the other, solitary confinement with nothing to do. Both expedients seek the same end;—to reconcile the idle to a life of industry. The former hopes to effect this by making labour habitual; the latter, by making idleness insupportable: and the preference of one method to the other depends upon the question, whether a man is more likely to betake himself, of his own accord, to work, who has been accustomed to employment, or who has been distressed by the want of it. When gaols are once provided for the *separate* confinement of prisoners, which both proposals require, the choice between them may soon be determined by experience. If labour be exacted, I would leave the whole, or a portion, of the earnings to the prisoner's use, and I would debar him from any other provision or supply; that his subsistence, however coarse and penurious, may be proportioned to his diligence, and that he may taste the advantage of industry together with the toil. I would go farther: I would measure the confinement, not by the duration of time, but by quantity of work, in order both to excite industry, and to render it more voluntary. But the principal

difficulty remains still; namely, how to dispose of criminals after their enlargement. By a rule of life, which is perhaps too invariably and indiscriminately adhered to, no one will receive a man or woman out of a gaol, into any service or employment whatever. This is the common misfortune of public punishments, that they preclude the offender from all honest means of future support*. It seems incumbent upon the state to secure a maintenance to those who are willing to work for it; and yet it is absolutely necessary to divide criminals as far asunder from one another as possible. Whether male prisoners might not, after the term of their confinement was expired, be distributed in the country, detained within certain limits, and employed upon the public roads; and females be remitted to the overseers of country parishes, to be there furnished with dwellings, and with the materials and implements of occupation; whether by these, or by what other methods, it may be possible to effect the two purposes of *employment* and *dispersion*, well merits the attention of

* Until this inconvenience be remedied, small offences had perhaps better go unpunished: I do not mean that the law should exempt them from punishment, but that private persons should be tender in prosecuting them.

all who are anxious to perfect the internal regulation of their country.

Torture is applied either to obtain confessions of guilt, or to exasperate or prolong the pains of death. No bodily punishment, however excruciating or long continued, receives the name of torture, unless it be designed to kill the criminal by a more lingering death; or to extort from him the discovery of some secret, which is supposed to lie concealed in his breast. *The question by torture* appears to be equivocal in its effects: for, since extremity of pain, and not any consciousness of remorse in the mind, produces those effects, an innocent man may sink under the torment, as well as he who is guilty. The latter has as much to fear from yielding, as the former. The instant and almost irresistible desire of relief may draw from one sufferer false accusations of himself or others, as it may sometimes extract the truth out of another. This ambiguity renders the use of torture, as a means of procuring information in criminal proceedings, liable to the risk of grievous and irreparable injustice. For which reason, though recommended by ancient and general example, it has been properly exploded from the mild and cautious system of penal jurisprudence established in this country.

Barbarous spectacles of human agony are justly found fault with, as tending to harden and deprave the public feelings, and to destroy that sympathy with which the sufferings of our fellow-creatures ought always to be seen; or, if no effect of this kind follow from them, they counteract in some measure their own design, by sinking men's abhorrence of the crime in their commiseration of the criminal. But if a mode of execution could be devised, which would augment the horror of the punishment, without offending or impairing the public sensibility by cruel or unseemly exhibitions of death, it might add something to the efficacy of the example: and, by being reserved for a few atrocious crimes, might also enlarge the scale of punishment; an addition to which seems wanting: for, as the matter remains at present, you hang a malefactor for a simple robbery, and can do no more to the villain who has poisoned his father. Somewhat of the sort we have been describing, was the proposal, not long since suggested, of casting murderers into a den of wild beasts, where they would perish in a manner dreadful to the imagination, yet concealed from the view.

Infamous punishments are mismanaged in this country, with respect both to the crimes

and the criminals. In the first place, they ought to be confined to offences which are holden in undisputed and universal detestation. To condemn to the pillory the author or editor of a libel against the state, who has rendered himself the favourite of a party, if not of the people, by the very act for which he stands there, is to gratify the offender, and to expose the laws to mockery and insult. In the second place; the delinquents who receive this sentence, are for the most part such as have long ceased either to value reputation, or to fear shame; of whose happiness, and of whose enjoyments, character makes no part. Thus the low ministers of libertinism, the keepers of bawdy or disorderly houses, are threatened in vain with a punishment that affects a sense which they have not; that applies solely to the imagination, to the virtue and the pride of human nature. The pillory, or any other infamous distinction, might be employed rightly, and with effect, in the punishment of some offences of higher life; as of frauds and peculation in office; of collusions and connivances, by which the public treasury is defrauded; of breaches of trust; of perjury, and subornation of perjury; of the clandestine and forbidden sale

of places : of flagrant abuses of authority, or neglect of duty ; and, lastly, of corruption in the exercise of confidential or judicial offices. In all which, the more elevated was the station of the criminal, the more signal and conspicuous would be the triumph of justice.

The *certainty* of punishment is of more consequence than the severity. Criminals do not so much flatter themselves with the lenity of the sentence, as with the hope of escaping. They are not so apt to compare what they gain by the crime with what they may suffer from the punishment, as to encourage themselves with the chance of concealment or flight. For which reason, a vigilant magistracy, an accurate police, a proper distribution of force and intelligence, together with due rewards for the discovery and apprehension of malefactors, and an undeviating impartiality in carrying the laws into execution, contribute more to the restraint and suppression of crimes than any violent exacerbations of punishment. And, for the same reason, of all contrivances directed to this end, those perhaps are most effectual which facilitate the conviction of criminals. The offence of counterfeiting the coin could not

be checked by all the terrors and the utmost severity of law, whilst the act of coining was necessary to be established by specific proof. The statute which made possession of the implements of coining capital, that is, which constitutedt hat possession complete evidence of the offender's guilt, was the first thing hat gave force and efficacy to the denunciations of law upon this subject. The statute of James the First, relative to the murder of bastard children, which ordains that the concealment of the birth should be deemed incontestable proof of the charge, though a harsh law, was, in like manner with the former, well calculated to put a stop to the crime.

It is upon the principle of this observation, that I apprehend much harm to have been done to the community, by the over-strained scrupulousness, or weak timidity of juries, which demands often such proof of a prisoner's guilt, as the nature and secrecy of his crime scarce possibly admit of; and which holds it the part of a *safe* conscience not to condemn any man, whilst there exists the minutest possibility of his innocence. Any story they may happen to have heard or read, whether real or feigned, in which courts

of justice have been misled by presumptions of guilt, is enough, in their minds, to found an acquittal upon, where positive proof is wanting. I do not mean that juries should indulge conjectures, should magnify suspicions into proofs, or even that they should weigh probabilities in *gold scales*: but when the preponderation of evidence is so manifest as to persuade every private understanding of the prisoner's guilt; when it furnishes the degree of credibility upon which men decide and act in all other doubts, and which experience hath shown that they may decide and act upon with sufficient safety; to reject such proof, from an insinuation of uncertainty that belongs to all human affairs, and from a general dread lest the charge of innocent blood should lie at their doors, is a conduct, which, however natural to a mind studious of its own quiet, is authorised by no considerations of rectitude or utility. It counteracts the care and damps the activity of government: it holds out public encouragement to villany, by confessing the impossibility of bringing villains to justice; and that species of encouragement which, as hath been just now observed, the minds of such men are most apt to entertain and dwell upon.

There are two popular maxims, which seem to have a considerable influence in producing the injudicious acquittals of which we complain. One is :—"That circumstantial evi- "dence falls short of positive proof." This assertion, in the unqualified sense in which it is applied, is not true. A concurrence of well-authenticated circumstances composes a stronger ground of assurance than positive testimony, unconfirmed by circumstances, usually affords. Circumstances cannot lie. The conclusion also which results from them, though deduced by only probable inference, is commonly more to be relied upon than the veracity of an unsupported solitary witness. The danger of being deceived is less, the actual instances of deception are fewer, in the one case than the other. What is called positive proof in criminal matters, as where a man swears to the person of the prisoner, and that he actually saw him commit the crime with which he is charged, may be founded in the mistake or perjury of a single witness. Such mistakes, and such perjuries, are not without many examples. Whereas, to impose upon a court of justice a chain of *circumstantial* evidence in support of a fabricated accusation, requires such a number of

false witnesses as seldom meet together; an union also of skill and wickedness which is still more rare; and, after all, this species of proof lies much more open to discussion, and is more likely, if false, to be contradicted, or to betray itself by some unforeseen inconsistency, than that direct proof which, being confined within the knowledge of a single person, which, appealing to, or standing connected with, no external or collateral circumstances, is incapable, by its very simplicity, of being confronted with opposite probabilities.

The other maxim which deserves a similar examination is this:—"That it is better that "ten guilty persons escape, than that one "innocent man should suffer." If by saying it is *better*, be meant that it is more for the public advantage, the proposition, I think, cannot be maintained. The security of civil life, which is essential to the value and the enjoyment of every blessing it contains, and the interruption of which is followed by universal misery and confusion, is protected chiefly by the dread of punishment. The misfortune of an individual (for such may the sufferings, or even the death, of an innocent person be called, when they are occa-

sioned by no evil intention) cannot be placed in competition with this object. I do not contend that the life or safety of the meanest subject ought, in any case, to be knowingly sacrificed: no principle of judicature, no end or punishment, can ever require *that*. But when certain rules of adjudication must be pursued, when certain degrees of credibility must be accepted, in order to reach the crimes with which the public are infested; courts of justice should not be deterred from the application of these rules by *every* suspicion of danger, or by the mere possibility of confounding the innocent with the guilty. They ought rather to reflect, that he who falls by a mistaken sentence, may be considered as falling for his country; whilst he suffers under the operation of those rules, by the general effect and tendency of which the welfare of the community is maintained and upholden.

CHAPTER X.

OF RELIGIOUS ESTABLISHMENTS, AND OF TOLERATION.

"A RELIGIOUS establishment is no part of "Christianity; it is only the means of in-"culcating it." Amongst the Jews, the rights and offices, the order, family, and succession of the priesthood, were marked out by the authority which declared the law itself. These, therefore, were *parts* of the Jewish religion, as well as the means of transmitting it. Not so with the new institution. It cannot be proved that any form of church-government was laid down in the Christian, as it had been in the Jewish Scriptures, with a view of fixing a constitution for succeeding ages; and which constitution, consequently, the disciples of Christianity would every-where, and at all times, by the very law of their religion, be obliged to adopt. Certainly, no command for this purpose was delivered by Christ himself: and if it be shown that the apostles ordained bishops and presbyters

amongst their first converts, it must be remembered that deacons also and deaconesses were appointed by them, with functions very dissimilar to any which obtain in the church at present. The truth seems to have been, that such offices were at first erected in the Christian church, as the good order, the instruction, and the exigencies of the society at that time required, without any intention, at least without any declared design, of regulating the appointment, authority, or the distinction of Christian ministers under future circumstances. This reserve, if we may so call it, in the Christian Legislator, is sufficiently accounted for by two considerations:—First, that no precise constitution could be framed, which would suit with the condition of Christianity in its primitive state, and with that which it was to assume when it should be advanced into a national religion: Secondly, that a particular designation of office or authority amongst the ministers of the new religion, might have so interfered with the arrangements of civil policy, as to have formed, in some countries, a considerable obstacle to the progress and reception of the religion itself.

The authority therefore of a church-establishment is founded in its utility: and whenever, upon this principle, we deliberate, concerning the form, propriety, or comparative excellency of different establishments, the single view under which we ought to consider any of them, is, that of "a scheme of instruction;" the single end we ought to propose by them is, "the preservation and communication of religious knowledge." Every other idea, and every other end that have been mixed with this, as the making of the church an engine, or even an *ally*, of the state; converting it into the means of strengthening or diffusing influence; or regarding it as a support of regal in opposition to popular forms of government, have served only to debase the institution, and to introduce into it numerous corruptions and abuses.

The notion of a religious establishment comprehends three things;—a clergy, or an order of men secluded from other professions to attend upon the offices of religion; a legal provision for the maintenance of the clergy; and the confining of that provision to the teachers of a particular sect of Christianity. If any one of these three things be wanting;

if there be no clergy, as amongst the Quakers; or if the clergy have no other provision than what they derive from the voluntary contribution of their hearers; or, if the provision which the laws assign to the support of religion be extended to various sects and denominations of Christians; there exists no national religion or established church, according to the sense which these terms are usually made to convey. He, therefore, who would defend ecclesiastical establishments, must show the separate utility of these three essential parts of their constitution:—

1. The question first in order upon the subject, as well as the most fundamental in its importance, is, whether the knowledge and profession of Christianity can be maintained in a country without a class of men set apart by public authority to the study and teaching of religion, and to the conducting of public worship; and for these purposes secluded from other employments. I add this last circumstance, because in it consists, as I take it, the substance of the controversy. Now, it must be remembered, that Christianity is an historical religion, founded in facts which are related to have passed, upon discourses which were holden, and let-

ters which were written, in a remote age, and distant country of the world, as well as under a state of life and manners, and during the prevalency of opinions, customs, and institutions, very unlike any which are found amongst mankind at present. Moreover, this religion, having been first published in the country of Judea, and being built upon the more ancient religion of the Jews, is necessarily and intimately connected with the Sacred Writings, with the history and polity of that singular people: to which must be added, that the records of both revelations, are preserved in languages which have long ceased to be spoken in any part of the world. Books which come down to us from times so remote, and under so many causes of unavoidable obscurity, cannot, it is evident, be understood without study and preparation. The languages must be learned. The various writings which these volumes contain, must be carefully compared with one another, and with themselves. What remains of contemporary authors, or of authors connected with the age, the country, or the subject of our Scriptures, must be perused and consulted, in order to interpret doubtful forms of speech, and to explain allusions

which refer to objects or usages that no longer exist. Above all, the modes of expression, the habits of reasoning and argumentation, which were then in use, and to which the discourses even of inspired teachers were necessarily adapted, must be sufficiently known, and can only be known at all by a due acquaintance with ancient literature. And, lastly, to establish the genuineness and integrity of the canonical Scriptures themselves, a series of testimony, recognising the notoriety and reception of these books, must be deduced from times near to those of their first publication, down the succession of ages through which they have been transmitted to us. The qualifications necessary for such researches demand, it is confessed, a degree of leisure, and a kind of education, inconsistent with the exercise of any other profession. But how few are there amongst the clergy, from whom any thing of this sort can be expected! how small a proportion of their number, who seem likely either to augment the fund of sacred literature, or even to collect what is already known!—To this objection it may be replied, that we sow many seeds to raise one flower. In order to produce a *few* capable of im-

proving and continuing the stock of Christian erudition, leisure and opportunity must be afforded to great numbers. Original knowledge of this kind can never be universal: but it is of the utmost importance, and it is enough, that there be, at all times, found *some* qualified for such inquiries, and in whose concurring and independent conclusions upon each subject, the rest of the Christian community may safely confide: whereas, without an order of clergy educated for the purpose, and led to the prosecution of these studies, by the habits, the leisure, and the object of their vocation, it may well be questioned whether the learning itself would not have been lost, by which the records of our faith are interpreted and defended. We contend, therefore, that an order of clergy is necessary to perpetuate the evidences of Revelation, and to interpret the obscurity of these ancient writings, in which the religion is contained. But beside this, which forms, no doubt, one design of their institution, the more ordinary offices of public teaching, and of conducting public worship, call for qualifications not usually to be met with amidst the employments of civil life. It has been acknowledged by some,

who cannot be suspected of making unnecessary concessions in favour of establishments, "to be barely *possible*, that a person who "was never educated for the office should "acquit himself with decency as a public "teacher of religion." And that surely must be a very defective policy which trusts to *possibilities* for success, when provision is to be made for regular and general instruction. Little objection to this argument can be drawn from the example of the Quakers, who, it may be said, furnish an experimental proof that the worship and profession of Christianity may be upholden, without a separate clergy. These sectaries every-where subsist in conjunction with a regular establishment. They have access to the writings, they profit by the labours of the clergy, in common with other Christians. They participate in that general diffusion of religious knowledge, which the constant teaching of a more regular ministry keeps up in the country: with such aids, and under such circumstances, the defects of a plan may not be much felt, although the plan itself be altogether unfit for general imitation.

2. If then an order of clergy be necessary, if it be necessary also to seclude them from

the employments and profits of other professions, it is evident they ought to be enabled to derive a maintenance from their own. Now this maintenance must either depend upon the voluntary contributions of their hearers, or arise from revenues assigned by authority of law. To the scheme of voluntary contribution there exists this insurmountable objection, that few would ultimately contribute any thing at all. However the zeal of a sect, or the novelty of a change, might support such an experiment for a while, no reliance could be placed upon it as a general and permanent provision. It is at all times a bad constitution, which presents temptations of interest in opposition to the duties of religion; or which makes the offices of religion expensive to those who attend upon them; or which allows pretences of conscience to be an excuse for not sharing in a public burden. If, by declining to frequent religious assemblies, men could save their money, at the same time that they indulged their indolence, and their disinclination to exercises of seriousness and reflection; or if, by dissenting from the national religion, they could be excused from contributing to the support of the ministers of

religion, it is to be feared that many would take advantage of the option which was thus imprudently left open to them, and that this liberty might finally operate to the decay of virtue, and an irrecoverable forgetfulness of all religion in the country. Is there not too much reason to fear, that, if it were referred to the discretion of each neighbourhood, whether they would maintain amongst them a teacher of religion or not, many districts would remain unprovided with any; that, with the difficulties which encumber every measure requiring the co-operation of numbers, and where each individual of the number has an interest secretly pleading against the success of the measure itself, associations for the support of Christian worship and instruction would neither be numerous nor long continued? The devout and pious might lament in vain the want or the distance of a religious assembly: they could not form or maintain one, without the concurrence of neighbours who felt neither their zeal nor their liberality.

From the difficulty with which congregations would be established and upheld upon the *voluntary* plan, let us carry our thoughts to the condition of those who are to officiate

in them. Preaching, in time, would become a mode of begging. With what sincerity, or with what dignity, can a preacher dispense the truths of Christianity, whose thoughts are perpetually solicited to the reflection how he may increase his subscription? His eloquence, if he possess any, resembles rather the exhibition of a player who is computing the profits of his theatre, than the simplicity of a man who, feeling himself the awful expectations of religion, is seeking to bring others to such a sense and understanding of their duty as may save their souls. Moreover, a little experience of the disposition of the common people will in every country inform us, that it is one thing to edify them in Christian knowledge, and another to gratify their taste for vehement, impassioned oratory: that he, not only whose success, but whose subsistence, depends upon collecting and pleasing a crowd, must resort to other arts than the acquirement and communication of sober and profitable instruction. For a preacher to be thus at the mercy of his audience; to be obliged to adapt his doctrines to the pleasure of a capricious multitude; to be continually affecting a style and manner neither natural to him,

nor agreeable to his judgement; to live in constant bondage to tyrannical and insolent directors; are circumstances so mortifying, not only to the pride of the human heart, but to the virtuous love of independency, that they are rarely submitted to without a sacrifice of principle, and a depravation of character;—at least it may be pronounced, that a ministry so degraded would soon fall into the lowest hands: for, it would be found impossible to engage men of worth and ability in so precarious and humiliating a profession.

If in deference then to these reasons, it be admitted, that a legal provision for the clergy, compulsory upon those who contribute to it, is expedient; the next question will be, whether this provision should be confined to one sect of Christianity, or extended indifferently to all? Now it should be observed, that this question never *can* offer itself where the people are agreed in their religious opinions; and that it never *ought* to arise, where a system may be framed of doctrines and worship wide enough to comprehend their disagreement; and which might satisfy all, by uniting all in the arti-

cles of their common faith, and in a mode of divine worship that omits every subject of controversy or offence. Where such a comprehension is practicable, the comprehending religion ought to be made that of the state. But if this be despaired of; if religious opinions exist, not only so various, but so contradictory, as to render it impossible to reconcile them to each other, or to any one confession of faith, rule of discipline, or form of worship: if, consequently, separate congregations and different sects must unavoidably continue in the country: under such circumstances, whether the laws ought to establish one sect in preference to the rest, that is, whether they ought to confer the provision assigned to the maintenance of religion upon the teachers of one system of doctrines alone, becomes a question of necessary discussion and of great importance. And whatever we may determine concerning speculative rights and abstract proprieties, when we set about the framing of an ecclesiastical constitution adapted to real life, and to the actual state of religion in the country, we shall find this question very nearly related to and principally indeed dependent upon another; namely,

"In what way, or by whom, ought the mi-
"nisters of religion to be *appointed?*" If the species of patronage be retained to which we are accustomed in this country, and which allows private individuals to nominate teachers of religion for districts and congregations to which they are absolute strangers; without some test proposed to the persons nominated, the utmost discordancy of religious opinions might arise between the several teachers and their respective congregations. A popish patron might appoint a priest to say mass to a congregation of protestants; an episcopal clergyman be sent to officiate in a parish of presbyterians; or a presbyterian divine to inveigh against the errors of popery before an audience of papists. The requisition then of subscription, or any other test by which the national religion is guarded, may be considered merely as a restriction upon the exercise of private patronage. The laws speak to the private patron thus:—"Of those whom we have
"previously pronounced to be fitly qualified
"to teach religion, we allow you to select
"one; but we do not allow you to decide
"what religion shall be established in a par-
"ticular district of the country; for which

" decision you are no wise fitted by any qua-
" lifications which, as a private patron, you
" may happen to possess. If it be necessary
" that the point be determined for the inha-
" bitants by any other will than their own,
" it is surely better that it should be deter-
" mined by a deliberate resolution of the le-
" gislature, than by the casual inclination of
" an individual, by whom the right is pur-
" chased, or to whom it devolves as a mere
" secular inheritance." Wheresoever, there-
fore, this constitution of patronage is adopt-
ed, a national religion, or the legal prefer-
ence of one particular religion to all others,
must almost necessarily accompany it. But,
secondly, let it be supposed that the appoint-
ment of the minister of religion was in every
parish left to the choice of the parishioners;
might not this choice, we ask, be safely exer-
cised without its being limited to the teachers
of any particular sect? The effect of such a li-
berty must be, that a papist, or a presbyterian,
a methodist, a moravian, or an anabaptist,
would successively gain possession of the pul-
pit, according as a majority of the party hap-
pened at each election to prevail. Now,
with what violence the conflict would upon
every vacancy be renewed; what bitter ani-

mosities would be revived, or rather be constantly fed and kept alive in the neighbourhood; with what unconquerable aversion the teacher and his religion would be received by the defeated party, may be foreseen by those who reflect with how much passion every dispute is carried on, in which the name of religion can be made to mix itself; much more where the cause itself is concerned so immediately as it would be in this. Or, thirdly, if the state appoint the ministers of religion, this constitution will differ little from the establishment of a national religion; for, the state will, undoubtedly, appoint those, and those alone, whose religious opinions, or rather whose religious denominations, agree with its own; unless it be thought that any thing would be gained to religious liberty by transferring the choice of the national religion from the legislature of the country to the magistrate who administers the executive government. The only plan which seems to render the legal maintenance of a clergy practicable, without the legal preference of one sect of Christians to others, is that of an experiment which is said to be attempted or designed in some of the new states of North America. The nature

of the plan is thus described:—A tax is levied upon the inhabitants for the general support of religion; the collector of the tax goes round with a register in his hand, in which are inserted, at the head of so many distinct columns, the names of the several religious sects that are professed in the country. The person who is called upon for the assessment, as soon as he has paid his quota, subscribes his name and the sum in which of the columns he pleases; and the amount of what is collected in each column is paid over to the minister of that denomination. In this scheme it is not left to the option of the subject, whether he will contribute, or how much he shall contribute, to the maintenance of a Christian ministry; it is only referred to his choice to determine by what sect his contribution shall be received. The above arrangement is undoubtedly the best that has been proposed upon this principle; it bears the appearance of liberality and justice; it may contain some solid advantages; nevertheless, it labours under inconveniencies which will be found, I think, upon trial, to overbalance all its recommendations. It is scarcely compatible with that, which is the first requisite in an ecclesiastical establish-

ment,—the division of the country into parishes of a commodious extent. If the parishes be small, and ministers of every denomination be stationed in each (which the plan seems to suppose), the expense of their maintenance will become too burdensome a charge for the country to support. If, to reduce the expense, the districts be enlarged, the place of assembling will oftentimes be too far removed from the residence of the persons who ought to resort to it. Again; the making the pecuniary success of the different teachers of religion to depend on the number and wealth of their respective followers, would naturally generate strifes and indecent jealousies amongst them; as well as produce a polemical and proselyting spirit, founded in or mixed with views of private gain, which would both deprave the principles of the clergy, and distract the country with endless contentions.

The argument, then, by which ecclesiastical establishments are defended, proceeds by these steps. The knowledge and profession of Christianity, cannot be upholden without a clergy; a clergy cannot be supported without a legal provision; a legal provision for the clergy cannot be constituted without the

preference of one sect of Christians to the rest: and the conclusion will be conveniently satisfactory in the degree in which the truth of these several propositions can be made out.

If it be deemed expedient to establish a national religion, that is to say, one sect in preference to all others; some *test*, by which the teachers of that sect may be distinguished from the teachers of different sects, appears to be an indispensable consequence. The existence of such an establishment supposes it: the very notion of a national religion includes that of a test.

But this necessity, which is real, hath, according to the fashion of human affairs, furnished to almost every church a pretence for extending, multiplying, and continuing such tests beyond what the occasion justified. For though some purposes of order and tranquillity may be answered by the establishment of creeds and confessions, yet they are at all times attended with serious inconveniencies; they check inquiry; they violate liberty; they ensnare the consciences of the clergy, by holding out temptations to prevarication; however they may express the persuasion, or be accommodated to the contro-

versies, or to the fears of the age in which they are composed, in process of time, and by reason of the changes which are wont to take place in the judgement of mankind upon religious subjects, they come at length to contradict the actual opinions of the church, whose doctrines they profess to contain; and they often perpetuate the proscription of sects, and tenets, from which any danger has long ceased to be apprehended.

It may not follow from these objections, that tests and subscriptions ought to be abolished: but it follows, that they ought to be made as simple and easy as possible; that they should be adapted, from time to time, to the varying sentiments and circumstances of the church in which they are received; and that they should at no time advance one step farther than some subsisting necessity requires. If, for instance, promises of conformity to the rites, liturgy, and offices of the church, be sufficient to prevent confusion and disorder in the celebration of divine worship, then such promises ought to be accepted in the place of stricter subscriptions. If articles of *peace*, as they are called, that is, engagements not to preach certain doctrines, nor to revive certain con-

troversies, would exclude indecent altercations amongst the national clergy, as well as secure to the public teaching of religion as much of uniformity and quiet as is necessary to edification; then confessions of *faith* ought to be converted into articles of peace. In a word, it ought to be holden a sufficient reason for relaxing the terms of subscription, or for dropping any or all of the articles to be subscribed, that no *present* necessity requires the strictness which is complained of, or that it should be extended to so many points of doctrine.

The division of the country into districts, and the stationing in each district a teacher of religion, forms the substantial part of every church establishment. The varieties that have been introduced into the government and discipline of different churches, are of inferior importance, when compared with this, in which they all agree. Of these œconomical questions, none seems more material than that which has been long agitated in the reformed churches of Christendom, whether a parity amongst the clergy, or a distinction of orders in the ministry, be more conducive to the general ends of the institution. In favour of that

system which the laws of this country have preferred, we may allege the following reasons:—that it secures tranquillity and subordination amongst the clergy themselves; that it corresponds with the gradations of rank in civil life, and provides for the edification of each rank, by stationing in each an order of clergy of their own class and quality; and, lastly, that the same fund produces more effect, both as an allurement to men of talents to enter into the church, and as a stimulus to the industry of those who are already in it, when distributed into prizes of different value, than when divided into equal shares.

After the state has once established a particular system of faith as a national religion, a question will soon occur, concerning the treatment and toleration of those who *dissent* from it. This question is properly preceded by another, concerning the right which the civil magistrate possesses to interfere in matters of religion at all: for, although this right be acknowledged whilst he is employed solely in providing means of public instruction, it will probably be disputed (indeed, it ever has been), when he proceeds to inflict penalties, to impose restraints or incapa-

cities on the account of religious distinctions. They who admit no other just original of civil government, than what is founded in some stipulation with its subjects, are at liberty to contend that the concerns of religion were excepted out of the social compact; that, in an affair which can only be transacted between God and a man's now conscience, no commission or authority was ever delegated to the civil magistrate, or could indeed be transferred from the person himself to any other. We, however, who have rejected this theory, because we cannot discover any actual contract between the state and the people, and because we cannot allow an arbitrary fiction to be made the foundation of real rights and of real obligations, find ourselves precluded from this distinction. The reasoning which deduces the authority of civil government from the will of God, and which collects that will from public expediency alone, binds us to the unreserved conclusion, that the jurisdiction of the magistrate is limited by no consideration but that of general utility: in plainer terms, that whatever be the subject to be regulated, it is lawful for him to interfere whenever his interference, in its general tendency, appears

to be conducive to the common interest. There is nothing in the nature of religion, as such, which exempts it from the authority of the legislator, when the safety or welfare of the community requires his interposition. It has been said, indeed, that religion, pertaining to the interests of a life to come, lies beyond the province of civil government, the office of which is confined to the affairs of this life. But in reply to this objection, it may be observed, that when the laws interfere even in religion, they interfere only with temporals; their effects terminate, their power operates only upon those rights and interests, which confessedly belong to their disposal. The acts of the legislature, the edicts of the prince, the sentence of the judge cannot effect my salvation; nor do they, without the most absurd arrogance, pretend to any such power: but they may deprive me of liberty, of property, and even of life itself, on account of my religion; and however I may complain of the injustice of the sentence, by which I am condemned, I cannot allege, that the magistrate has transgressed the boundaries of his jurisdiction; because the property, the liberty, and the life of the subject, *may* be taken away by the authority of the laws,

for any reason, which in the judgement of the legislature, renders such a measure necessary to the common welfare. Moreover, as the precepts of religion may regulate all the offices of life, or may be so construed as to extend to all, the exemption of religion from the control of human laws might afford a plea, which would exclude civil government from every authority over the conduct of its subjects. Religious liberty is, like civil liberty, not an immunity from restraint, but the being restrained by no law, but what in a greater degree conduces to the public welfare.

Still it is right, "to obey God rather than "man." Nothing that we have said, encroaches upon the truth of this sacred and undisputed maxim: the right of the magistrate to ordain, and the obligation of the subject to obey, in matters of religion, may be very different; and will be so, as often as they flow from opposite apprehensions of the Divine will. In affairs that are properly of a civil nature, in "the things that are Cæ-"sar's," this difference seldom happens. The law authorises the act which it enjoins; Revelation being either silent upon the subject, or referring to the laws of the country, or requiring only that men act by some fixed

rule, and that this rule be established by competent authority. But when human laws interpose their direction in matters of religion, by dictating, for example, the object or the mode of divine worship; by prohibiting the profession of some articles of faith, and by exacting that of others, they are liable to clash with what private persons believe to be already settled by precepts of Revelation; or to contradict what God himself, they think, hath declared to be true. In this case, on whichever side the mistake lies, or whatever plea the state may allege to justify its edict, the subject can have none to excuse his compliance. The same consideration also points out the distinction, as to the authority of the state, between temporals and spirituals. The magistrate is not to be obeyed in temporals more than in spirituals, where a repugnancy is perceived between his commands and any credited manifestations of the Divine will: but such repugnancies are much less likely to arise in one case than the other.

When we grant that it is lawful for the magistrate to interfere in religion as often as his interference appears to him to conduce, in its general tendency, to the public happi-

ness; it may be argued, from this concession, that since salvation is the highest interest of mankind, and since, consequently, to advance *that* is to promote the public happiness in the best way, and in the greatest degree, in which it can be promoted, it follows, that it is not only the right, but the duty of every magistrate, invested with supreme power, to enforce upon his subjects the reception of that religion, which he deems most acceptable to God; and to enforce it by such methods as may appear most effectual for the end proposed. A popish king, for example, who should believe that salvation is not attainable out of the precincts of the Romish church, would derive a right from our principles (not to say that he would be bound by them) to employ the power with which the constitution intrusted him, and which power, in absolute monarchies, commands the lives and fortunes of every subject of the empire, in reducing his people within that communion. We confess that this consequence is inferred from the principles we have laid down concerning the foundation of civil authority, not without the resemblance of a regular deduction: we confess also that it is a conclusion which it be-

hoves us to dispose of; because if it really follow from our theory of government, the theory itself ought to be given up. Now it will be remembered, that the terms of our proposition are these: "That it is lawful for the "magistrate to interfere in the affairs of re- "ligion, whenever his interference appears to "him to conduce, by its general tendency, "to the public happiness." The clause of "general tendency," when this rule comes to be applied, will be found a very significant part of the direction. It obliges the magistrate to reflect, not only whether the religion which he wishes to propagate amongst his subjects, be that which will best secure their eternal welfare; not only, whether the methods he employs be likely to effectuate the establishment of that religion; but also upon this farther question, whether the kind of interference, which he is about to exercise, if it were adopted as a common maxim amongst states and princes, or received as a general rule for the conduct of government in matters of religion, would, upon the whole, and in the mass of instances in which his example might be imitated, conduce to the furtherance of human salvation. If the magistrate, for example, should think that, al-

though the application of his power might, in the instance concerning which he deliberates, advance the true religion, and together with it the happiness of his people, yet that the same engine, in other hands, who might assume the right to use it with the like pretensions of reason and authority that he himself alleges, would more frequently shut out truth, and obstruct the means of salvation; he would be bound by this opinion, still admitting public utility to be the supreme rule of his conduct, to refrain from expedients, which, whatever particular effects *he* may expect from them, are, in their general operation, dangerous or hurtful. If there be any difficulty in the subject, it arises from that which is the cause of every difficulty in morals;—the competition of particular and general consequences; or, what is the same thing, the submission of one general rule to another rule which is still more general.

Bearing then in mind, that it is the *general* tendency of the measure, or, in other words, the effects which would arise from the measure being *generally* adopted, that fixes upon it the character of rectitude or injustice; we proceed to inquire what is the

degrée and the sort of interference of secular laws in matters of religion, which are likely to be beneficial to the public happiness. There are two maxims which will in a great measure regulate our conclusions upon this head. The first is, that any form of Christianity is better than no religion at all: the second, that, of different systems of faith, that is the best which is the truest. The first of these positions will hardly be disputed, when we reflect that every sect and modification of Christianity holds out the happiness and misery of another life, as depending chiefly upon the practice of virtue or of vice in this; and that the distinctions of virtue and vice are nearly the same in all. A person who acts under the impression of these hopes and fears, though combined with many errors and superstitions, is more likely to advance both the public happiness and his own, than one who is destitute of all expectation of a future account. The latter proposition is founded in the consideration that the principal importance of religion consists in its influence upon the fate and condition of a future existence. This influence belongs only to that religion which comes from God. A political religion may be framed, which

shall embrace the purposes, and describe the duties, of political society perfectly well: but if it be not delivered by God, what assurance does it afford, that the decisions of the Divine judgement will have any regard to the rules which it contains? By a man who acts with a view to a future judgement, the authority of a religion is the first thing inquired after; a religion which wants authority, with him wants every thing. Since then this authority appertains, not to the religion which is most commodious,—to the religion which is most sublime and efficacious,—to the religion which suits best with the form, or seems most calculated to uphold the power and stability of civil government; but only to that religion which comes from God; we are justified in pronouncing the *true* religion, by its very *truth*, and independently of all considerations of tendencies, aptnesses, or any other internal qualities whatever, to be universally the best.

From the first proposition follows this inference, that when the state enables its subjects to learn *some* form of Christianity, by distributing teachers of a religious system throughout the country, and by providing for the maintenance of these teachers at the

public expense ; that is, in fewer terms, when the laws *establish* a national religion, they exercise a power and an interference, which are likely, in their general tendency, to promote the interest of mankind : for, even supposing the species of Christianity which the laws patronise to be errroneous and corrupt, yet when the option lies between this religion and no religion at all (which would be the consequence of leaving the people without any public means of instruction, or any regular celebration of the offices of Christianity), our proposition teaches us that the former alternative is constantly to be preferred.

But after the right of the magistrate to establish a particular religion has been, upon this principle, admitted ; a doubt sometimes presents itself, whether the religion which he ought to establish, be that which he himself professes, or that which he observes to prevail amongst the majority of the people. Now when we consider this question with a view to the formation of a general rule upon the subject (which view alone can furnish a just solution of the doubt), it must be assumed to be an equal chance whether of the two religions contains more of truth,—that of the magistrate, or that of the people.

The chance then that is left to truth being equal upon both suppositions, the remaining consideration will be, from which arrangement more efficacy can be expected;—from an order of men appointed to teach the people their own religion, or to convert them to another? In my opinion, the advantage lies on the side of the former scheme: and this opinion, if it be assented to, makes it the duty of the magistrate, in the choice of the religion which he establishes, to consult the faith of the nation, rather than his own.

The case also of dissenters must be determined by the principles just now stated. *Toleration* is of two kinds;—the allowing to dissenters the unmolested profession and exercise of their religion, but with an exclusion from offices of trust and emolument in the state; which is a *partial* toleration: and the admitting them, without distinction, to all the civil privileges and capacities of other citizens; which is a *complete* toleration. The expediency of toleration, and consequently the right of every citizen to demand it, as far as relates to liberty of conscience, and the claim of being protected in the free and safe profession of his religion, is deducible from the *second* of those propositions, which we have

delivered as the grounds of our conclusions upon the subject. That proposition asserts truth, and truth in the abstract, to be the supreme perfection of every religion. The advancement, consequently, and discovery of truth, is that end to which all regulations concerning religion ought principally to be adapted. Now, every species of intolerance which enjoins suppression and silence; and every species of persecution which enforces such injunctions, is adverse to the progress of truth, for as much as it causes that to be fixed by one set of men, at one time, which is much better, and with much more probability of success, left to the independent and progressive inquiries of separate individuals. Truth results from discussion and from controversy; is investigated by the labours and researches of private persons. Whatever, therefore, prohibits these, obstructs that industry and that liberty, which it is the common interest of mankind to promote. In religion, s in other subjects, truth, if left to itself, will almost always obtain the ascendancy. If different religions be professed in the same country, and the minds of men remain unfettered and unawed by intimidations of law, that religion which is founded

in maxims of reason and credibility, will gradually gain over the other to it. I do not mean that men will formally renounce their ancient religion, but that they will adopt into it the more rational doctrines, the improvements and discoveries of the neighbouring sect; by which means the worse religion, without the ceremony of a reformation, will insensibly assimilate itself to the better. If popery, for instance, and protestantism were permitted to dwell quietly together, papists might not become protestants (for, the name is commonly the last thing that is changed*), but they would become more enlightened and informed; they would by little and little incorporate into their creed many of the tenets of protestantism, as well as imbibe a portion of its spirit and moderation.

The justice and expediency of toleration we found primarily in its conduciveness to truth, and in the superior value of truth to that of any other quality which a religion can possess: this is the principal argument;

* Would we let the *name* stand, we might often attract men, without their perceiving it, much nearer to ourselves, than, if they did perceive it, they would be willing to come.

but there are some auxiliary considerations, too important to be omitted. The confining of the subject to the religion of the state, is a needless violation of natural liberty, and is an instance in which constraint is always grievous. Persecution produces no sincere conviction, nor any real change of opinion; on the contrary, it vitiates the public morals, by driving men to prevarication; and commonly ends in a general though secret infidelity, by imposing, under the name of revealed religion, systems of doctrine which men cannot believe, and dare not examine: finally, it disgraces the character, and wounds the reputation, of Christianity itself, by making it the author of oppression, cruelty, and bloodshed.

Under the idea of religious toleration, I include the toleration of all books of serious argumentation: but I deem it no infringement of religious liberty, to restrain the circulation of ridicule, invective, and mockery, upon religious subjects; because this species of writing applies solely to the passions, weakens the judgement, and contaminates the imagination of its readers; has no tendency whatever to assist either the investigation or the impression of truth: on the

contrary, whilst it stays not to distinguish between the authority of different religions, it destroys alike the influence of all.

Concerning the admission of dissenters from the established religion to offices and employments in the public service (which is necessary, to render toleration *complete*), doubts have been entertained, with some appearance of reason. It is possible that such religious opinions may be holden, as are utterly incompatible with the necessary functions of civil government; and which opinions consequently disqualify those who maintain them, from exercising any share in its administration. There have been enthusiasts who held that Christianity has abolished all distinction of property, and that she enjoins upon her followers a community of goods. With what tolerable propriety could one of this sect be appointed a judge or a magistrate, whose office it is to decide upon questions of private right, and to protect men in the exclusive enjoyment of their property? It would be equally absurd to intrust a military command to a Quaker, who believes it to be contrary to the gospel to take up arms. This is possible; therefore it cannot be laid down as an universal truth, that reli-

gion is not, in its nature, a cause which will justify exclusion from public employments. When we examine, however, the sects of Christianity which actually prevail in the world, we must confess that, with the single exception of refusing to bear arms, we find no tenet in any of them which incapacitates men for the service of the state. It has indeed been asserted that discordancy of religions, even supposing each religion to be free from any errors that affect the safety or the conduct of government, is enough to render men unfit to act together, in public stations. But upon what argument, or upon what experience, is this assertion founded? I perceive no reason why men of different religious persuasions may not sit upon the same bench, deliberate in the same council, or fight in the same ranks, as well as men of various or opposite opinions upon any controverted topic of natural philosophy, history, or ethics.

There are two cases in which test-laws are wont to be applied, and in which, if in any, they may be defended. One is, where two or more religions are contending for establishment; and where there appears no way

of putting an end to the contest, but by giving to one religion such a decided superiority in the legislature and government of the country, as to secure it against danger from any other. I own that I should assent to this precaution with many scruples. If the dissenters from the establishment, become a majority of the people; the establishment itself ought to be altered or qualified. If there exist amongst the different sects of the country such a parity of numbers, interest, and power, as to render the preference of one sect to the rest, and the choice of that sect, a matter of hazardous success, and of doubtful election, some plan similar to that which is meditated in North America, and which we have described in a preceding part of the present chapter, though encumbered with great difficulties, may perhaps suit better with this divided state of public opinions, than any constitution of a national church whatever. In all other situations, the establishment will be strong enough to maintain itself. However, if a test be applicable with justice upon this principle at all, it ought to be applied in regal governments to the chief magistrate himself, whose power might other-

wise overthrow or change the established religion of the country, in opposition to the will and sentiments of the people.

The second case of *exclusion*, and in which, I think, the measure is more easily vindicated, is that of a country in which some disaffection to the subsisting government happens to be connected with certain religious distinctions. The state undoubtedly has a right to refuse its power and its confidence to those who seek its destruction. Wherefore, if the generality of any religious sect entertain dispositions hostile to the constitution, and if government have no other way of knowing its enemies than by the religion which they profess, the professors of that religion may justly be excluded from offices of trust and authority. But even *here* it should be observed, that it is not against the religion that government shuts its doors, but against those political principles, which, however independent they may be of any article of religious faith, the members of that communion are found in fact to hold. Nor would the legislator make religious tenets the test of men's inclinations towards the state, if he could discover any other that was equally certain and notorious. Thus, if the

members of the Romish church, for the most part, adhere to the interests, or maintain the right of a foreign pretender to the crown of these kingdoms: and if there be no way of distinguishing those who do from those who do not retain such dangerous prejudices; government is well warranted in fencing out the whole sect from situations of trust and power. But even in this example, it is not to popery that the laws object, but to popery as the mark of jacobitism; an equivocal indeed and fallacious mark, but the best, and perhaps the only one, that can be devised. But then it should be remembered, that as the connexion between popery and jacobitism, which is the sole cause of suspicion, and the sole justification of those severe and jealous laws which have been enacted against the professors of that religion, was accidental in its origin, so probably it will be temporary in its duration; and that these restrictions ought not to continue one day longer than some visible danger renders them necessary to the preservation of public tranquility.

After all, it may be asked, Why should not the legislator direct his test against the political principles themselves which he

wishes to exclude, rather than encounter them through the medium of religious tenets, the only crime and the only danger of which consist in their presumed alliance with the former? Why, for example, should a man be required to renounce transubstantiation, before he be admitted to an office in the state, when it might seem to be sufficient that he abjure the pretender? There are but two answers that can be given to the objection which this question contains: first, that it is not opinions which the laws fear, so much as inclinations; and that political inclinations are not so easily detected by the affirmation or denial of any abstract proposition in politics, as by the discovery of the religious creed with which they are wont to be united:—secondly, that when men renounce their religion, they commonly quit all connexion with the members of the church which they have left; that church no longer expecting assistance of friendship from them: whereas particular persons might insinuate themselves into offices of trust and authority, by subscribing political assertions, and yet retain their predilection for the interests of the religious sect to which they continued to belong. By which means,

government would sometimes find, though it could not accuse the individual, whom it had received into its service, of disaffection to the civil establishment, yet that, through him, it had communicated the aid and influence of a powerful station to a party who were hostile to the constitution. These answers, however, we propose rather than defend. The measure certainly cannot be defended at all, except where the suspected union between certain obnoxious principles in politics, and certain tenets in religion, is nearly universal; in which case, it makes little difference to the subscriber, whether the test be religious or political: and the state is somewhat better secured by the one than the other.

The result of our examination of those general tendencies, by which every interference of civil government in matters of religion ought to be tried, is this: "That a "comprehensive national religion, guarded "by a few articles of peace and conformity, "together with a legal provision for the "clergy of that religion; and with a *complete* "toleration of all dissenters from the esta-"blished church, without any other limitation "or exception, than what arises from the "conjunction of dangerous political disposi-

" tions with certain religious tenets, appears
" to be, not only the most just and liberal
" but the wisest and safest system, which a
" state can adopt; inasmuch as it unites the
" several perfections which a religious consti-
" tution ought to aim at:—liberty of con-
" science, with means of instruction; the pro-
" gress of truth, with the peace of society;
" the right of private judgement, with the
" care of the public safety."

CHAPTER XI.

OF POPULATION AND PROVISION; AND OF AGRICULTURE AND COMMERCE, AS SUBSERVIENT THERETO.

THE final view of all rational politics is, to produce the greatest quantity of happiness in a given tract of country. The riches, strength, and glory of nations; the topics which history celebrates, and which alone almost engage the praises and possess the admiration of mankind, have no value farther than as they contribute to this end. When they interfere with it, they are evils and not

the less real for the splendor that surrounds them.

Secondly; although we speak of communities as of sentient beings; although we ascribe to them happiness and misery, desires, interests, and passions, nothing really exists or feels but *individuals*. The happiness of a people is made up of the happiness of single persons; and the quantity of happiness can only be augmented by increasing the number of the percipients, or the pleasure of their perceptions.

Thirdly; notwithstanding that diversity of condition, especially different degrees of plenty, freedom, and security, greatly vary the quantity of happiness enjoyed by the same number of individuals; and notwithstanding that extreme cases may be found, of human beings so galled by the rigours of slavery, that the increase of numbers is only the amplification of misery: yet, within certain limits, and within those limits to which civil life is diversified under the temperate governments that obtain in Europe, it may be affirmed, I think, with certainty, that the quantity of happiness produced in any given district, *so far* depends upon the number of inhabitants, that, in comparing adjoining

periods in the same country, the collective happiness will be nearly in the exact proportion of the numbers, that is, twice the number of inhabitants will produce double the quantity of happiness; in distant periods, and different countries, under great changes or great dissimilitude of civil condition, although the proportion of enjoyment may fall much short of that of the numbers, yet still any considerable excess of numbers will usually carry with it a preponderation of happiness; that, at least, it may, and ought to be assumed in all political deliberations, that a larger portion of happiness is enjoyed amongst *ten* persons, possessing the means of healthy subsistence, than can be produced by *five* persons, under every advantage of power, affluence, and luxury.

From these principles it follows, that the quantity of happiness in a given district, although it is possible it may be increased, the number of inhabitants remaining the same, is chiefly and most naturally affected by alteration of the numbers: that, consequently, the decay of population is the greatest evil that a state can suffer; and the improvement of it the object which ought, in all countries, to be aimed at in preference to every other political purpose whatsoever.

The importance of population, and the superiority of *it* to every other national advantage, are points necessary to be inculcated, and to be understood; inasmuch as false estimates, or fantastic notions of national grandeur, are perpetually drawing the attention of statesmen and legislators from the care of this, which is, at all times, the true and absolute interest of a country: for which reason, we have stated these points with unusual formality. We will confess, however, that a competition can seldom arise between the advancement of population and any measure of sober utility; because, in the ordinary progress of human affairs, whatever, in any way, contributes to make a people happier, tends to render them more numerous.

In the fecundity of the human, as of every other species of animals, nature has provided for an indefinite multiplication. Mankind have increased to their present number from a single pair: the offspring of early marriages, in the ordinary course of procreation, do more than replace the parents: in countries, and under circumstances very favourable to subsistence, the population has been doubled in the space of twenty years: the havoc oc-

casioned by wars, earthquakes, famine, or pestilence, is usually repaired in a short time. These indications sufficiently demonstrate the tendency of nature, in the human species, to a continual increase of its numbers. It becomes therefore a question that may reasonably be propounded, what are the causes which confine or check the natural progress of this multiplication? And the answer which first presents itself to the thoughts of the inquirer is, that the population of a country must stop when the country can maintain no more, that is, when the inhabitants are already so numerous as to exhaust all the provision which the soil can be made to produce. This, however, though an insuperable bar, will seldom be found to be *that* which actually checks the progress of population in any country of the world; because the number of the people have seldom, in any country, arrived at this limit, or even approached to it. The fertility of the ground, in temperate regions, is capable of being improved by cultivation to an extent which is unknown; much, however, beyond the state of improvement in any country in Europe. In our own, which holds al-

most the first place in the knowledge and encouragement of agriculture, let it only be supposed that every field in England, of the same original quality with those in the neighbourhood of the metropolis, and consequently capable of the same fertility, were by a like management made to yield an equal produce; and it may be asserted, I believe with truth, that the quantity of human provision raised in the island would be increased five-fold. The two principles, therefore, upon which population seems primarily to depend, the fecundity of the species, and the capacity of the soil, would in most, perhaps in all countries, enable it to proceed much farther than it has yet advanced. The number of marriageable women, who, in each country, remain unmarried, afford a computation how much the agency of nature in the diffusion of human life is cramped and contracted; and the quantity of waste, neglected, or mismanaged surface,—together with a comparison, like the preceding, of the crops raised from the soil in the neighbourhood of populous cities, and under a perfect state of cultivation, with those which lands of equal or superior quality yield in different situations,—

will show in what proportion the indigenous productions of the earth are capable of being farther augmented.

The fundamental proposition upon the subject of *population*, which must guide every endeavour to improve it, and from which every conclusion concerning it may be deduced, is this: "Wherever the commerce "between the sexes is regulated by marriage, "and a provision for that mode of subsist- "ence, to which each class of the commu- "nity is accustomed, can be procured with "ease and certainty, there the number of "the people will increase; and the rapidity, "as well as the extent of the increase, will "be proportioned to the degree in which "these causes exist."

This proposition we will draw out into the several principles which it contains.

I. First, the proposition asserts the "ne- "cessity of confining the intercourse of the "sexes to the marriage-union." It is only in the marriage-union that this intercourse is sufficiently prolific. Beside which, family-establishments alone are fitted to perpetuate a succession of generations. The offspring of a vague and promiscuous concubinage are not only few, and liable to perish by neglect,

but are seldom prepared for or introduced into situations suited to the raising of families of their own. Hence the advantages of marriages. Now nature, in the constitution of the sexes, has provided a stimulus which will infallibly secure the frequency of marriages, with all their beneficial effects upon the state of population, provided the male part of the species be prohibited from irregular gratifications. This impulse, which is sufficient to surmount almost every impediment to marriage, will operate in proportion to the difficulty, expense, danger, or infamy, the sense of guilt, or the fear of punishment, which attend licentious indulgences. Wherefore, in countries in which subsistence is become scarce, it behoves the state to watch over the public morals with increased solicitude: for, nothing but the instinct of nature, under the restraint of chastity, will induce men to undertake the labour or consent to the sacrifice of personal liberty and indulgence, which the support of a family, in such circumstances, requires.

II. The second requisite which our proposition states as necessary to the success of population, is, "the ease and certainty with "which a provision can be procured for that

" mode of subsistence to which each class of " the community is accustomed." It is not enough that men's *natural* wants be supplied; that a provision adequate to the real exigencies of human life be attainable: habitual superfluities become actual wants; opinion and fashion convert articles of ornament and luxury into necessaries of life. And it must not be expected from men in general, at least in the present relaxed state of morals and discipline, that they will enter into marriages which degrade their condition, reduce their mode of living, deprive them of the accommodations to which they have been accustomed, or even of those ornaments or appendages of rank and station, which they have been taught to regard as belonging to their birth, or class, or profession, or place in society. The same consideration, namely, a view to their *accustomed* mode of life, which is so apparent in the superior orders of the people, has no less influence upon those ranks which compose the mass of the community. The kind and quality of food and liquor, the species of habitation, furniture, and clothing, to which the common people of each country are habituated, must be attainable with ease and certainty before marriages will

be sufficiently early and general to carry the progress of population to its just extent. It is in vain to allege, that a more simple diet, ruder habitations, or coarser apparel, would be sufficient for the purposes of life and health, or even of physical ease and pleasure. Men will not marry with this encouragement. For instance, when the common people of a country are accustomed to eat a large proportion of animal food, to drink wine, spirits, or beer, to wear shoes and stockings, to dwell in stone houses, they will not marry to live in clay cottages, upon roots and milk, with no other clothing than skins, or what is necessary to defend the trunk of the body from the effects of cold; although these last may be all that the sustentation of life and health requires, or that even contribute much to animal comfort and enjoyment.

The ease, then, and certainty, with which the means can be procured, not barely of subsistence, but of that mode of subsisting which custom hath in each country established, form the point upon which the state and progress of population chiefly depend. Now, there are three causes which evidently regulate this point: the mode itself of subsisting

which prevails in the country; the quantity of provision suited to that mode of subsistence, which is either raised in the country, or imported into it; and, lastly, the distribution of that provision.

These three causes merit distinct considerations.

I. The mode of living which actually obtains in a country. In China, where the inhabitants frequent the sea-shore, or the banks of large rivers, and subsist in a great measure upon fish, the population is described to be excessive. This peculiarity arises, not probably from any civil advantages, any care or policy, any particular constitution or superior wisdom of government; but simply from hence, that the species of food to which custom hath reconciled the desires and inclinations of the inhabitants, is that which, of all others, is procured in the greatest abundance, with the most ease, and stands in need of the least preparation. The natives of Indostan being confined, by the laws of their religion, to the use of vegetable food, and requiring little except rice, which the country produces in plentiful crops; and food, in warm climates, composing the only want of life; these countries are populous,

under all the injuries of a despotic, and the agitations of an unsettled government. If any revolution, or what would be called perhaps refinement of manners, should generate in these people a taste for the flesh of animals, similar to what prevails amongst the Arabian hordes; should introduce flocks and herds into grounds which are now covered with corn; should teach them to account a certain portion of this species of food amongst the necessaries of life; the population, from this single change, would suffer in a few years a great diminution: and this diminution would follow, in spite of every effort of the laws, or even of any improvement that might take place in their civil condition. In Ireland, the simplicity of living alone, maintains a considerable degree of population, under great defects of police, industry, and commerce.

Under this head, and from a view of these considerations, may be understood the true evil and proper danger of *luxury*.

Luxury, as it supplies employment and promotes industry, assists population. But then there is another consequence attending it, which counteracts and often overbalances these advantages. When, by introducing

more superfluities into general reception, luxury has rendered the usual accommodations of life more expensive, artificial, and elaborate, the difficulty of maintaining a family, conformably with the established mode of living, becomes greater, and what each man has to spare from his personal consumption proportionably less: the effect of which is, that marriages grow less frequent, agreeably to the maxim above laid down, and which must be remembered as the foundation of all our reasoning upon the subject, that men will not marry, to *sink* their place or condition in society, or to forego those indulgences which their own habits, or what they observe amongst their equals, have rendered necessary to their satisfaction. This principle is applicable to every article of diet and dress, to houses, furniture, attendance; and this effect will be felt in every class of the community. For instance, the custom of wearing broad-cloth and fine linen repays the shepherd and flax-grower, feeds the manufacturer, enriches the merchant, gives not only support but existence to multitudes of families: hitherto, therefore, the effects are beneficial; and were these the only effects, such elegancies, or if you please to call them

so, such luxuries, could not be too universal. But here follows the mischief: when once fashion hath annexed the use of these articles of dress to any certain class, the middling ranks, for example, of the community, each individual of that rank finds them to be *necessaries* of life; that is, finds himself obliged to comply with the example of his equals, and to maintain that appearance which the custom of society requires. This obligation creates such a demand upon his income, and withal adds so much to the cost and burden of a family, as to put it out of his power to marry, with the prospect of continuing his habits, or of maintaining his place and situation in the world. We see, in this description, the cause which induces men to waste their lives in a barren celibacy; and this cause, which impairs the very source of population, is justly placed to the account of luxury.

It appears, then, that *luxury*, considered with a view to population, acts by two opposite effects; and it seems probable that there exists a point in the scale, to which luxury may ascend, or to which the wants of mankind may be multiplied with advantage to the community, and beyond which the pre-

judicial consequences begin to preponderate. The determination of this point, though it assume the form of an arithmetical problem, depends upon circumstances too numerous, intricate, and undefined, to admit of a precise solution. However, from what has been observed concerning the tendency of luxury to diminish marriages, in which tendency the evil of it resides, the following general conclusions may be established.

1st. That, of different kinds of luxury, those are the most innocent, which afford employment to the greatest number of artists and manufacturers; or those, in other words, in which the price of the work bears the greatest proportion to that of the raw material. Thus, luxury in dress or furniture is universally preferable to luxury in eating, because the articles which constitute the one, are more the production of human art and industry, than those which supply the other.

2dly. That it is the *diffusion*, rather than the *degree* of luxury, which is to be dreaded as a national evil. The mischief of luxury consists, as we have seen, in the obstruction which it forms to marriage. Now, it is only a small part of the people that the higher ranks in any country compose; for which

reason, the facility or the difficulty of supporting the expense of *their* station, and the consequent increase or diminution of marriages among *them*, will influence the state of population but little. So long as the prevalency of luxury is confined to a few of elevated rank, much of the benefit is felt, and little of the inconveniency. But when the imitation of the same manners descends, as it always will do, into the mass of the people; when it advances the requisites of living, beyond what it adds to men's abilities to purchase them; then it is that luxury checks the formation of families, in a degree that ought to alarm the public fears.

3dly. That the condition most favourable to population is that of a laborious, frugal people ministering to the demands of an opulent, luxurious nation; because this situation, whilst it leaves them every advantage of luxury, exempts them from the evils which naturally accompany its admission into any country.

II. Next to the mode of living, we are to consider "the quantity of provision suited "to that mode, which is either raised in the "country, or imported into it:" for, this is the order in which we assigned the causes of

population, and undertook to treat of them. Now, if we measure the quantity of provision by the number of human bodies it will support in due health and vigour, this quantity, the extent and quality of the soil from which it is raised being given, will depend greatly upon the *kind*. For instance, a piece of ground capable of supplying animal food sufficient for the subsistence of ten persons, would sustain, at least, the double of that number with grain, roots, and milk. The first resource of savage life is in the flesh of wild animals; hence the numbers amongst savage nations, compared with the tract of country which they occupy, are universally small; because this species of provision is, of all others, supplied in the slenderest proportion. The next step was the invention of pasturage, or the rearing of flocks and herds of tame animals: this alteration added to the stock of provision much. But the last and principal improvement was to follow; namely, tillage, or the artificial production of corn, esculent plants, and roots. This discovery, whilst it changed the quality of human food, augmented the quantity in a vast proportion. So far as the state of population is governed and limited by the quan-

tity of provision, perhaps there is no single cause that affects it so powerfully, as the kind and quality of food which chance or usage hath introduced into a country. In England, notwithstanding the produce of the soil has been, of late, considerably increased, by the enclosure of wastes, and the adoption, in many places, of a more successful husbandry, yet we do not observe a corresponding addition to the number of inhabitants; the reason of which appears to me to be the more general consumption of animal food amongst us. Many ranks of people whose ordinary diet was, in the last century, prepared almost entirely from milk, roots, and vegetables, now require every day a considerable portion of the flesh of animals. Hence a great part of the richest lands of the country are converted to pasturage. Much also of the bread-corn, which went directly to the nourishment of human bodies, now only contributes to it by fattening the flesh of sheep and oxen. The mass and volume of provisions are hereby diminished; and what is gained in the melioration of the soil, is lost in the quality of the produce. This consideration teaches us, that tillage, as an object of national care and encourage-

ment, is universally preferable to pasturage, because the kind of provision which it yields, goes much farther in the sustentation of human life. Tillage is also recommended by this additional advantage, that it affords employment to a much more numerous peasantry. Indeed, pasturage seems to be the art of a nation, either imperfectly civilised, as are many of the tribes which cultivate it in the internal parts of Asia; or of a nation, like Spain, declining from its summit by luxury and inactivity.

The kind and quality of provision, together with the extent and capacity of the soil from which it is raised, being the same; the quantity procured will principally depend upon two circumstances,—the *ability* of the occupier, and the *encouragement* which he receives. The greatest misfortune of a country is an indigent tenantry. Whatever be the native advantages of the soil, or even the skill and industry of the occupier, the want of a sufficient capital confines every plan, as well as cripples and weakens every operation of husbandry. This evil is felt, where agriculture is accounted a servile or mean employment; where farms are extremely subdivided, and badly furnished with habita-

tions; where leases are unknown, or are of short or precarious duration. With respect to the *encouragement* of husbandry; in this, as in every other employment, the true reward of industry is in the price and sale of the produce. The exclusive right to the produce is the only incitement which acts constantly and universally; the only spring which keeps human labour in motion. All therefore that the laws can do, is to secure this right to the occupier of the ground, that is, to constitute such a system of tenure, that the full and entire advantage of every improvement go to the benefit of the improver; that every man work for himself, and not for another; and that no one share in the profit who does not assist in the production. By the *occupier* I here mean, not so much the person who performs the work, as him who procures the labour and directs the management: and I consider the whole profit as *received* by the occupier, when the occupier is benefited by the whole value of what is produced, which is the case with the tenant who pays a fixed rent for the use of land, no less than with the proprietor who holds it as his own. The one has the same interest in the produce, and in the ad-

vantage of every improvement, as the other. Likewise the proprietor, though he grant out his estate to farm, may be considered as the *occupier*, in so much as he regulates the occupation by the choice, superintendency, and encouragement of his tenants, by the disposition of his lands, by erecting buildings, providing accommodations, by prescribing conditions, or supplying implements and materials of improvement; and is entitled, by the rule of public expediency above mentioned, to receive, in the advance of his rent, a share of the benefit which arises from the increased produce of his estate. The violation of this fundamental maxim of agrarian policy constitutes the chief objection to the holding of lands by the state, by the king, by corporate bodies, by private persons in right of their offices or benefices. The inconvenience to the public arises not so much from the unalienable quality of lands thus holden in perpetuity, as from hence, that proprietors of this description seldom contribute much either of attention or expense to the cultivation of their estates, yet claim, by the rent, a share in the profit of every improvement that is made upon them. This complaint can only be obviated by "long leases at a fixed rent,"

which convey a large portion of the interest to those who actually conduct the cultivation. The same objection is applicable to the holding of lands by foreign proprietors, and in some degree to estates of too great extent being placed in the same hands.

III. Beside the *production* of provision, there remains to be considered the DISTRIBUTION.—It is in vain that provisions abound in the country, unless I be able to obtain a share of them. This reflection belongs to every individual. The plenty of provision produced, the quantity of the public stock, affords subsistence to individuals, and encouragement to the formation of families, only in proportion as it is *distributed*, that is, in proportion as these individuals are allowed to draw from it a supply of their own wants. The *distribution*, therefore, becomes of equal consequence to population with the *production*. Now, there is but one principle of distribution that can ever become universal, namely, the principle of "exchange;" or, in other words, that every man have something to give in return for what he wants. Bounty, however it may come in aid of another principle, however it may occasionally qualify the rigour, or supply the im-

perfection of an established rule of distribution, can never itself become that rule or principle; because men will not work to give the produce of their labour away. Moreover, the only equivalents that can be offered in exchange for provision are *power* and *labour*. All property is *power*. What we call property in land, is the power to use it, and to exclude others from the use. Money is the representative of *power*, because it is convertible into power: the value of it consists in its faculty of procuring *power* over things and persons. But *power* which results from civil conventions (and of this kind is what we call a man's fortune or estate), is necessarily confined to a few, and is withal soon exhausted: whereas the capacity of *labour* is every man's natural possession, and composes a constant and renewing fund. The hire, therefore, or produce of personal industry, is that which the bulk of every community, must bring to market, in exchange for the means of subsistence; in other words, employment must, in every country, be the medium of distribution, and the source of supply to individuals. But when we consider the *production* and *distribution* of provision, as distinct from, and independent of, each other; when, supposing

the same quantity to be produced, we inquire in what way, or according to what rule, it may be *distributed*, we are led to a conception of the subject not at all agreeable to truth and reality: for, in truth and reality, though provision must be produced before it be distributed, yet the production depends, in a great measure, upon the distribution. The quantity of provision raised out of the ground, so far as the raising of it requires human art or labour, will evidently be regulated by the demand: the demand, or, in other words, the price and sale, being that which alone rewards the care, or excites the diligence of the husbandman. But the sale of provision depends upon the number, not of those who want, but of those who have something to offer in return for what they want; not of those who would consume, but of those who can buy; that is, upon the number of those who have the fruits of some other kind of industry to tender in exchange for what they stand in need of from the production of the soil.

We see, therefore, the connexion between population and *employment*. Employment affects population "directly," as it affords the only medium of distribution by which

individuals can obtain from the common stock a supply for the wants of their families: it affects population "indirectly," as it augments the stock itself of provision, in the only way by which the production of it can be effectually encouraged,—by furnishing purchasers. No man can purchase without an equivalent; and that equivalent, by the generality of the people, must in every country be derived from employment.

And upon this basis is founded the public benefit of *trade*, that is to say, its subserviency to population, in which its only real utility consists. Of that industry, and of those arts and branches of trade, which are employed in the production, conveyance, and preparation of any principal species of human food, as of the business of the husbandman, the butcher, baker, brewer, corn-merchant, &c. we acknowledge the necessity: likewise of those manufactures which furnish us with warm clothing, convenient habitations, domestic utensils, as of the weaver, tailor, smith, carpenter, &c. we perceive (in climates, however, like ours, removed at a distance from the sun) the conduciveness to population, by their rendering human life more healthy, vigorous, and comfortable.

But not one half of the occupations which compose the trade of Europe, fall within either of these descriptions. Perhaps two-thirds of the manufacturers in England are employed upon articles of confessed luxury, ornament, or splendor; in the superfluous embellishment of some articles which are useful in their kind, or upon others which have no conceivable use or value, but what is founded in caprice or fashion. What can be less necessary, or less connected with the sustentation of human life, than the whole produce of the silk, lace, and plate manufactory? yet what multitudes labour in the different branches of these arts! What can be imagined more capricious than the fondness for tobacco and snuff? yet how many various occupations, and how many thousands in each, are set at work in administering to this frivolous gratification! Concerning trades of this kind (and this kind comprehends more than half of the trades that are exercised), it may fairly be asked, "How, "since they add nothing to the stock of "provision, do they tend to increase the "number of the people?" We are taught to say of trade, "that it maintains multi-"tudes:" but by what means does it *main-*

tain them, when it produces nothing upon which the support of human life depends?—In like manner with respect to foreign commerce; of that merchandise which brings the necessaries of life into a country, which imports, for example, corn, or cattle, or cloth, or fuel, we allow the tendency to advance population, because it increases the stock of provision by which the people are subsisted. But this effect of foreign commerce is so little seen in our own country, that, I believe, it may be affirmed of Great Britain, what Bishop Berkley said of a neighbouring island, that, if it were encompassed with a wall of brass fifty cubits high, the country might maintain the same number of inhabitants that find subsistence in it at present; and that every necessary, and even every real comfort and accommodation of human life might be supplied in as great abundance as they now are. Here, therefore, as before, we may fairly ask, by what operation it is, that foreign commerce, which brings into the country no one article of human subsistence, promotes the multiplication of human life?

The answer of this inquiry, will be contained in the discussion of another, *viz.*

Since the soil will maintain many more than it can employ, what must be done, supposing the country to be full, with the remainder of the inhabitants? They who, by the rules of partition (and some such must be established in every country), are entitled to the land; and they who, by their labour upon the soil, acquire a right in its produce, will not part with their property for nothing; or, rather, they will no longer raise from the soil what they can neither use themselves, nor exchange for what they want. Or, lastly, if these were willing to distribute what they could spare of the provision which the ground yielded, to others who had no share or concern in the property or cultivation of it, yet still the most enormous mischiefs would ensue from great numbers remaining unemployed. The idleness of one half of the community would overwhelm the whole with confusion and disorder. One only way presents itself of removing the difficulty which this question states, and which is simply this; that they, whose work is not wanted, nor can be employed in the raising of provision out of the ground, convert their hands and ingenuity to the fabrication of articles which may gratify and requite those

who are so employed, or who, by the division of lands in the country, are entitled to the exclusive possession of certain parts of them. By this contrivance, all things proceed well. The occupier of the ground raises from it the utmost that he can procure, because he is repaid for what he can spare by something else which he wants, or with which he is pleased: the artist or manufacturer, though he have neither any property in the soil, nor any concern in its cultivation, is regularly supplied with the produce, because he gives, in exchange for what he stands in need of, something upon which the receiver places an equal value: and the community is kept quiet, while both sides are engaged in their respective occupations.

It appears, then, that the business of one half of mankind is, to set the other half at work; that is, to provide articles which, by tempting the desires, may stimulate the industry, and call forth the activity of those upon the exertion of whose industry, and the application of whose faculties, the production of human provision depends. A certain portion only of human labour is, or can be, *productive*; the rest is *instrumental*;—both equally necessary, though the one have no

other object than to excite the other. It appears also, that it signifies nothing, as to the main purpose of trade, how superfluous the articles which it furnishes are; whether the want of them be real or imaginary; whether it be founded in nature or in opinion, in fashion, habit, or emulation; it is enough that they be actually desired and sought after. Flourishing cities are raised and supported by trading in tobacco; populous towns subsist by the manufactory of ribands. A watch may be a very unnecessary appendage to the dress of a peasant: yet if the peasant will till the ground in order to obtain a watch, the true design of trade is answered: and the watch-maker, while he polishes the case, or files the wheels of his machine, is contributing to the production of corn as effectually, though not so directly, as if he handled the spade or held the plough. The use of tobacco has been mentioned already, not only as an acknowledged superfluity, but as affording a remarkable example of the caprice of human appetite; yet, if the fisherman will ply his nets, or the mariner fetch rice from foreign countries, in order to procure to himself this indulgence, the market is supplied with two import-

ant articles of provision, by the instrumentality of a merchandise which has no other apparent use than the gratification of a vitiated palate.

But it may come to pass that the husbandman, land-owner, or whoever he be that is entitled to the produce of the soil, will no longer exchange it for what the manufacturer has to offer. He is already supplied to the extent of his desires. For instance, he wants no more cloth; he will no longer therefore give the weaver corn in return for the produce of his looms: but he would readily give it for tea, or for wine. When the weaver finds this to be the case, he has nothing to do but to send his cloth abroad, in exchange for tea or for wine, which he may barter for that provision which the offer of his cloth will no longer procure. The circulation is thus revived: and the benefit of the discovery is, that, whereas the number of weavers, who could find subsistence from their employment, was before limited by the consumption of cloth in the country, that number is now augmented, in proportion to the demand for tea and wine. This is the principle of *foreign* commerce. In the magnitude and complexity of the machine, the

principle of motion is sometimes lost or unobserved; but it is always simple and the same, to whatever extent it may be diversified and enlarged in its operation.

The effect of trade upon agriculture, the process of which we have been endeavouring to describe, is visible in the neighbourhood of trading towns, and in those districts which carry on a communication with the markets of trading towns. The husbandmen are busy and skilful: the peasantry laborious; the land is managed to the best advantage, and double the quantity of corn or herbage (articles which are ultimately converted into human provision) raised from it, of what the same soil yields in remoter and more neglected parts of the country. Wherever a thriving manufactory finds means to establish itself, a new vegetation springs up around it. I believe it is true that agriculture never arrives at any considerable, much less at its highest, degree of perfection, where it is not connected with trade, that is, where the demand for the produce is not increased by the consumption of trading cities.

Let it be remembered then, that agriculture is the immediate source of human provision; that trade conduces to the produc-

tion of provision only as it promotes agriculture; that the whole system of commerce, vast and various as it is, hath no other public importance than its subserviency to this end.

We return to the proposition we laid down, "that employment universally pro-"motes population." From this proposition it follows, that the comparative utility of different branches of national commerce is measured by the number which each branch *employs*. Upon which principle a scale may easily be constructed, which shall assign to the several kinds and divisions of foreign trade their respective degrees of public importance. In this scale, the *first* place belongs to the exchange of wrought goods for raw materials, as of broad-cloth for raw silk; cutlery for wool; clocks or watches for iron, flax, or furs; because this traffic provides a market for the labour that has already been expended, at the same time that it supplies materials for new industry. Population always flourishes where this species of commerce obtains to any considerable degree. It is the cause of employment, or the certain indication. As it takes off the manufactures of the country, it promotes employment; as

it brings in raw materials, it supposes the existence of manufactories in the country, and a demand for the article when manufactured.—The *second* place is due to that commerce, which barters one species of wrought goods for another, as stuffs for calicoes, fustains for cambricks, leather for paper, or wrought goods for articles which require no farther preparation, as for wine, oil, tea, sugar, &c. This also assists employment; because, when the country is stocked with one kind of manufacture, it renews the demand by converting it into another: but it is inferior to the former, as it promotes this end by one side only of the bargain,—by what it carries out.—The *last*, the lowest, and most disadvantageous species of commerce, is the exportation of raw materials in return for wrought goods: as when wool is sent abroad to purchase velvets; hides or peltry, to procure shoes, hats, or linen cloth. This trade is unfavourable to population, because it leaves no room or demand for employment, either in what it takes out of the country, or in what it brings into it. Its operation on both sides is noxious. By its exports, it diminishes the very subject upon which the industry of the inhabitants ought

to be exercised; by its imports, it lessens the encouragement of that industry, in the same proportion that it supplies the consumption of the country with the produce of foreign labour. Of different branches of *manufactory*, those are, in their nature, the most beneficial, in which the price of the wrought article exceeds in the highest proportion that of the raw material: for, this excess measures the quantity of employment, or, in other words, the number of manufacturers which each branch sustains. The produce of the ground is never the most advantageous article of foreign commerce. Under a perfect state of public economy, the soil of the country should be applied solely to the raising of provisions for the inhabitants, and its trade be supplied by their industry. A nation will never reach its proper extent of population, so long as its principal commerce consists in the exportation of corn or cattle, or even of wine, oil, tobacco, madder, indigo, timber; because these last articles take up that surface which ought to be covered with the materials of human subsistence.

It must be here however noticed, that we have all along considered the inhabitants of a country as maintained by the produce of

the country; and that what we have said is applicable with strictness to this supposition alone. The reasoning, nevertheless, may easily be adapted to a different case: for when provision is not produced, but *imported*, what has been affirmed concerning provision, will be, in a great measure, true of that article, whether it be money, produce, or labour, which is exchanged for provision. Thus, when the Dutch raise madder, and exchange it for corn; or when the people of America plant tobacco, and send it to Europe for cloth; the cultivation of madder and tobacco becomes as necessary to the subsistence of the inhabitants, and by consequence will affect the state of population in these countries as sensibly, as the actual production of food, or the manufactory of raiment. In like manner, when the same inhabitants of Holland earn money by the carriage of the produce of one country to another, and with that money purchase the provision from abroad which their own land is not extensive enough to supply, the increase or decline of this carrying trade will influence the numbers of the people no less than similar changes would do in the cultivation of the soil.

The few principles already established, will enable us to describe the effects upon population which may be expected from the following important articles of national conduct and economy:

I. EMIGRATION.—*Emigration* may be either the overflowing of a country, or the desertion. As the increase of the species is indefinite; and the number of inhabitants which any given tract or surface can support, finite; it is evident that great numbers may be constantly leaving a country, and yet the country remain constantly full. Or whatever be the cause which invincibly limits the population of a country, when the number of the people has arrived at that limit, the progress of generation, beside continuing the succession, will supply multitudes for foreign emigration. In these two cases, emigration neither indicates any political decay, nor in truth diminishes the number of the people; nor ought to be prohibited or discouraged. But emigrants may relinquish their country, from a sense of insecurity, oppression, annoyance, and inconveniency. Neither, again, *here* is it emigration which wastes the people, but the evils that occasion it. It would be in vain, if it were practi-

cable, to confine the inhabitants at home: for, the same causes which drive them out of the country, would prevent their multiplication if they remained in it. Lastly, men may be tempted to change their situation by the allurement of a better climate, of a more refined or luxurious manner of living; by the prospect of wealth; or, sometimes, by the mere nominal advantage of higher wages and prices. This class of emigrants, with whom alone the laws can interfere with effect, will never, I think, be numerous. With the generality of a people, the attachment of mankind to their homes and country, the irksomeness of seeking new habitations, and of living amongst strangers, will outweigh, so long as men possess the necessaries of life in safety, or at least so long as they can obtain a provision for that mode of subsistence which the class of citizens to which they belong are accustomed to enjoy, all the inducements that the advantages of a foreign land can offer. There appear, therefore, to be few cases in which emigration can be prohibited, with advantage to the state; it appears also that emigration is an equivocal symptom, which will probably accompany the decline of the political body, but which

may likewise attend a condition of perfect health and vigour.

II. COLONISATION.—The only view under which our subject will permit us to consider *colonisation*, is in its tendency to augment the population of the parent state.—Suppose a fertile, but empty island, to lie within the reach of a country, in which arts and manufactures are already established; suppose a colony sent out from such a country, to take possession of the island, and to live there under the protection and authority of their native government; the new settlers will naturally convert their labour to the cultivation of the vacant soil, and with the produce of that soil will draw a supply of manufactures from their countrymen at home. Whilst the inhabitants continue few, and lands cheap and fresh, the colonists will find it easier and more profitable to raise corn, or rear cattle, and with corn and cattle to purchase woollen cloth, for instance, or linen, than to spin or weave these articles for themselves. The mother country, meanwhile, derives from this connexion an increase both of provision and employment. It promotes at once the two great requisites upon which the facility of subsistence, and by conse-

quence the state of population, depend,—*production* and *distribution*; and this in a manner the most direct and beneficial. No situation can be imagined more favourable to population, than that of a country which works up goods for others, whilst these others are cultivating new tracts of land for them: for as, in a genial climate, and from a fresh soil, the labour of one man will raise provision enough for ten, it is manifest that, where all are employed in agriculture, much the greater part of the produce will be spared from the consumption; and that three out of four, at least, of those who are maintained by it, will reside in the country which receives the redundancy. When the new country does not remit *provision* to the old one, the advantage is less; but still the exportation of wrought goods, by whatever return they are paid for, advances population in that secondary way, in which those trades promote it that are not employed in the production of provision. Whatever prejudice, therefore, some late events have excited against schemes of colonisation, the system itself is founded in apparent national utility; and what is more, upon principles favourable to the common interest of human nature:

for, it does not appear by what other method newly-discovered and unfrequented countries can be peopled, or during the infancy of their establishment be protected or supplied. The error which we of this nation at present lament, seems to have consisted not so much in the original formation of colonies, as in the subsequent management; in imposing restrictions too rigorous, or in continuing them too long; in not perceiving the point of time when the irresistible order and progress of human affairs demand a change of laws and policy.

III. MONEY.—Where *money* abounds, the people are generally numerous: yet gold and silver neither feed nor clothe mankind; nor are they in all countries converted into provision by purchasing the necessaries of life at foreign markets; nor do they, in any country, compose those articles of personal or domestic ornament, which certain orders of the community have learnt to regard as necessaries of life, and without the means of procuring which they will not enter into family establishments:—at least, this property of the precious metals obtains in a very small degree. The effect of money upon the number of the people, though visible to ob-

servation, is not explained without some difficulty. To understand this connexion properly, we must return to the proposition with which we concluded our reasoning upon the subject; "that population is chiefly pro-" moted by employment." Now of employment, money is partly the indication, and partly the cause. The only way in which money regularly and spontaneously *flows into* a country, is in return for the goods that are sent out of it, or the work that is performed by it; and the only way in which money is *retained in* a country, is by the country supplying, in a great measure, its own consumption of manufactures. Consequently, the quantity of money found in a country, denotes the amount of labour and employment: but still, employment, not money, is the cause of population; the accumulation of money being merely a collateral effect of the same cause, or a circumstance which accompanies the existence, and measures the operation of that cause. And this is true of money, only whilst it is acquired by the industry of the inhabitants. The treasures which belong to a country by the possession of mines, or by the exaction of tribute from foreign dependencies, afford no conclusion

concerning the state of population. The influx from these sources may be immense, and yet the country remain poor and ill-peopled; of which we see an egregious example in the condition of Spain, since the acquisition of its South-American dominions.

But, secondly, money may become also a real and an operative *cause* of population, by acting as a stimulus to industry, and by facilitating the means of subsistence. The ease of subsistence, and the encouragement of industry, depend neither upon the price of labour, nor upon the price of provision, but upon the proportion which one bears to the other. Now the influx of money into a country, naturally tends to advance this proportion; that is, every fresh accession of money raises the price of labour before it raises the price of provision. When money is brought from abroad, the persons, be they who they will, into whose hands it first arrives, do not buy up provision with it, but apply it to the purchase and payment of labour. If the state receives it, the state dispenses what it receives amongst soldiers, sailors, artificers, engineers, shipwrights, workmen;—if private persons bring home treasures of gold and silver, they usually expend them in the building of houses,

the improvement of estates, the purchase of furniture, dress, equipage, in articles of luxury or splendor;—if the merchant be enriched by returns of his foreign commerce, he applies his increased capital to the enlargement of his business at home. The money ere long comes to market for provision; but it comes thither through the hands of the manufacturer, the artist, the husbandman, and labourer. Its effect, therefore, upon the price of art and labour will *precede* its effect upon the price of provision; and, during the interval between one effect and the other, the means of subsistence will be multiplied and facilitated, as well as industry be excited by new rewards. When the greater plenty of money in circulation has produced an advance in the price of provision, corresponding to the advanced price of labour, its effect ceases. The labourer no longer gains any thing by the increase of his wages. It is not, therefore, the quantity of specie collected into a country, but the continual increase of that quantity, from which the advantage arises to employment and population. It is only the *accession* of money which produces the effect, and it is only by money constantly flowing into a

country that the effect can be constant. Now whatever consequence arises to the country from the influx of money, the contrary may be expected to follow from the diminution of its quantity: and accordingly we find, that whatever cause drains off the specie of a country, faster than the streams which feed it can supply, not only impoverishes the country, but depopulates it. The knowledge and experience of this effect have given occasion to a phrase which occurs in almost every discourse upon commerce or politics. The *balance of trade* with any foreign nation is said to be against or in favour of a country, simply as it tends to carry money out, or bring it in; that is, according as the price of the imports exceeds or falls short of the price of the exports. So invariably is the increase or diminution of the specie of a country regarded as a test of the public advantage or detriment, which arises from any branch of its commerce.

IV. TAXATION.—As *taxes* take nothing out of a country; as they do not diminish the public stock, only vary the distribution of it, they are not necessarily prejudicial to population. If the state exact money from certain members of the community, she dis-

penses it also amongst other members of the same community. They who contribute to the revenue, and they who are supported or benefited by the expenses of government, are to be placed one against the other: and whilst what the subsistence of one part is profited by receiving, compensates for what that of the other suffers by paying, the common fund of the society is not lessened. This is true: but it must be observed, that although the sum distributed by the state be always *equal* to the sum collected from the people, yet the gain and loss to the means of subsistence may be very *unequal;* and the balance will remain on the wrong or the right side of the account, according as the money passes by taxation from the industrious to the idle, from the many to the few, from those who want to those who abound, or in a contrary direction. For instance; a tax upon coaches, to be laid out in the repair of roads, would probably improve the population of a neighbourhood; a tax upon cottages, to be ultimately expended in the purchase and support of coaches, would certainly diminish it. In like manner, a tax upon wine or tea distributed in bounties to fishermen or husbandmen, would augment

the provision of a country; a tax upon fisheries and husbandry, however indirect or concealed, to be converted, when raised, to the procuring of wine or tea for the idle and opulent, would naturally impair the public stock. The effect, therefore, of taxes upon the means of subsistence depends not so much upon the amount of the sum levied, as upon the object of the tax, and the application. Taxes likewise may be so adjusted as to conduce to the restraint of luxury, and the correction of vice; to the encouragement of industry, trade, agriculture, and marriage. Taxes thus contrived, become rewards and penalties; not only sources of revenue, but instruments of police. Vices indeed themselves cannot be taxed, without holding forth such a conditional toleration of them as to destroy men's perception of their guilt: a tax comes to be considered as a commutation: the materials, however, and incentives of vice may. Although, for instance, drunkenness would be, on this account, an unfit object of taxation, yet public houses and spirituous liquors are very properly subjected to heavy imposts.

Nevertheless, although it may be true that taxes cannot be pronounced to be detrimental

to population, by any absolute necessity in their nature; and though, under some modifications, and when urged only to a certain extent, they may even operate in favour of it; yet it will be found, in a great plurality of instances, that their tendency is noxious. Let it be supposed that nine families inhabit a neighbourhood, each possessing barely the means of subsistence, or of that mode of subsistence which custom hath established amongst them; let a tenth family be quartered upon these, to be supported by a tax raised from the nine: or rather, let one of the nine have his income augmented by a similar deduction from the incomes of the rest; in either of these cases, it is evident that the whole district would be broken up: for, as the entire income of each is supposed to be barely sufficient for the establishment which it maintains, a deduction of any part destroys that establishment. Now it is no answer to this objection, it is no apology for the grievance, to say, that nothing is taken out of the neighbourhood; that the stock is not diminished: the mischief is done by deranging the distribution. Nor, again, is the luxury of one family, or even the maintenance of an additional family, a recompense

to the country for the ruin of nine others. Nor, lastly, will it alter the effect, though it may conceal the cause, that the contribution, instead of being levied directly upon each day's wages, is mixed up in the price of some article of constant use and consumption, as in a tax upon candles, malt, leather, or fuel. This example illustrates the tendency of taxes to obstruct subsistence; and the minutest degree of this obstruction will be felt in the formation of families. The example, indeed, forms an extreme case; the evil is magnified, in order to render its operation distinct and visible. In real life, families may not be broken up, or forced from their habitation, houses be quitted, or countries suddenly deserted, in consequence of any new imposition whatever; but marriages will become gradually less frequent.

It seems necessary, however, to distinguish between the operation of a new tax, and the effect of taxes which have been long established. In the course of circulation, the money may flow back to the hands from which it was taken. The proportion between the supply and the expense of subsistence, which had been disturbed by the tax, may at length recover itself again. In the instance

just now stated, the addition of a tenth family to the neighbourhood, or the enlarged expenses of one of the nine, may, in some shape or other, so advance the profits, or increase the employment of the rest, as to make full restitution for the share of their property of which it deprives them; or, what is more likely to happen, a reduction may take place in their mode of living, suited to the abridgement of their incomes. Yet still the ultimate and permanent effect of taxation, though distinguishable from the impression of a new tax, is generally adverse to population. The *proportion* above spoken of, can only be restored by one side or other of the following alternative: by the people either contracting their wants, which at the same time diminishes consumption and employment; or by raising the price of labour, which necessarily adding to the price of the productions and manufactures of the country, checks their sale at foreign markets. A nation which is burdened with taxes, must always be undersold by a nation which is free from them, unless the difference be made up by some singular advantage of climate, soil, skill, or industry. This quality belongs to all taxes which affect the mass of the

community, even when imposed upon the properest objects, and applied to the fairest purposes. But abuses are inseparable from the disposal of public money. As governments are usually administered, the produce of public taxes is expended upon a train of gentry, in the maintaining of pomp, or in the purchase of influence. The conversion of property which taxes effectuate, when they are employed in this manner, is attended with obvious evils. It takes from the industrious, to give to the idle; it increases the number of the latter; it tends to accumulation; it sacrifices the conveniency of many to the luxury of a few; it makes no return to the people, from whom the tax is drawn, that is satisfactory or intelligible; it encourages no activity which is useful or productive.

The sum to be raised being settled, a wise statesman will contrive his taxes principally with a view to their effect upon *population*: that is, he will so adjust them as to give the least possible obstruction to those means of subsistence by which the mass of the community is maintained. We are accustomed to an opinion that a tax, to be just, ought to be accurately proportioned to the circum-

stances of the persons who pay it. But upon what, it might be asked, is this opinion founded; unless it could be shown that such a proportion interferes the least with the general conveniency of subsistence? Whereas I should rather believe, that a tax, constructed with a view to that conveniency, ought to rise upon the different classes of the community, in a much higher ratio than the simple proportion of their incomes. The point to be regarded, is not what men have, but what they can spare; and it is evident that a man who possesses a thousand pounds a year, can more easily give up a hundred, than a man with a hundred pounds a year can part with ten; that is, those habits of life which are reasonable and innocent, and upon the ability to continue which the formation of families depends, will be much less affected by the one deduction than the other: it is still more evident, that a man of a hundred pounds a year would not be so much distressed in his subsistence, by a demand from him of ten pounds, as a man of ten pounds a year would be by the loss of one: to which we must add, that the population of every country being replenished by the marriages of the lowest ranks of the society, their accommo-

dation and relief become of more importance to the state, than the conveniency of any higher but less numerous order of its citizens. But whatever be the proportion which public expediency directs, whether the simple, the duplicate, or any higher or intermediate proportion of men's incomes, it can never be attained by any *single* tax; as no single object of taxation can be found, which measures the ability of the subject with sufficient generality and exactness. It is only by a system and variety of taxes mutually balancing and equalising one another, that a due proportion can be preserved. For instance, if a tax upon lands press with greater hardship upon those who live in the country, it may be properly counterpoised by a tax upon the rent of houses, which will affect principally the inhabitants of large towns. Distinctions may also be framed in some taxes, which shall allow abatements or exemptions to married persons; to the parents of a certain number of legitimate children; to improvers of the soil; to particular modes of cultivation, as to tillage in preference to pasturage; and in general to that industry which is immediately *productive*, in preference to that which is only *instrumental*;

but, above all, which may leave the heaviest part of the burden upon the methods, whatever they be, of acquiring wealth without industry, or even of subsisting in idleness.

V. EXPORTATION OF BREAD-CORN.—Nothing seems to have a more positive tendency to reduce the number of the people, than the sending abroad part of the provision by which they are maintained; yet this has been the policy of legislators very studious of the improvement of their country. In order to reconcile ourselves to a practice, which appears to militate with the chief interest, that is, with the population of the country that adopts it, we must be reminded of a maxim which belongs to the productions both of nature and art, "that it is impossible "to have enough without a superfluity." The point of sufficiency cannot, in any case, be so exactly hit upon, as to have nothing to spare, yet never to want. This is peculiarly true of bread-corn, of which the annual increase is extremely variable. As it is necessary that the crop be adequate to the consumption in a year of scarcity, it must, of consequence, greatly exceed it in a year of plenty. A redundancy therefore will occasionally arise from the very care that is taken

to secure the people against the danger of want; and it is manifest that the exportation of this redundancy subtracts nothing from the number that can regularly be maintained by the produce of the soil. Moreover, as the exportation of corn, under these circumstances, is attended with no direct injury to population, so the benefits, which indirectly arise to population from foreign commerce, belong to this, in common with other species of trade; together with the peculiar advantage of presenting a constant incitement to the skill and industry of the husbandman, by the promise of a certain sale and an adequate price, under every contingency of season and produce. There is another situation, in which corn may not only be exported, but in which the people can thrive by no other means; that is, of a newly settled country with a fertile soil. The exportation of a large proportion of the corn which a country produces, proves, it is true, that the inhabitants have not yet attained to the number which the country is capable of maintaining: but it does not prove but that they may be hastening to this limit with the utmost practicable celerity, which is the perfection to be sought for in a young establish-

ment. In all cases except those two, and in the former of them to any greater degree than what is necessary to take off occasional redundancies, the exportation of corn is either itself noxious to population, or argues a defect of population arising from some other cause.

VI. ABRIDGEMENT OF LABOUR.—It has long been made a question, whether those mechanical contrivances, which *abridge labour*, by performing the same work by fewer hands, be detrimental or not to the population of a country. From what has been delivered in preceding parts of the present chapter, it will be evident that this question is equivalent to another,—whether such contrivances diminish or not the quantity of employment. Their first and most obvious effect undoubtedly is this; because, if one man be made to do what three men did before, two are immediately discharged; but if, by some more general and remoter consequence, they increase the demand for work, or, what is the same thing, prevent the diminution of that demand, in a greater proportion than they contract the number of hands by which it is performed, the quantity of employment, upon the whole, will gain an

addition. Upon which principle it may be observed, first, that whenever a mechanical invention succeeds in one place, it is necessary that it be imitated in every other where the same manufacture is carried on: for, it is manifest that he, who has the benefit of a conciser operation, will soon outvie and undersell a competitor who continues to use a more circuitous labour. It is also true, in the second place, that whoever *first* discover or adopt a mechanical improvement, will, for some time, draw to themselves an increase of employment; and that this preference may continue even after the improvement has become general; for, in every kind of trade, it is not only a great but permanent advantage, to have once pre-occupied the public reputation. Thirdly, after every superiority which might be derived from the possession of a secret has ceased, it may be well questioned whether even then any loss can accrue to employment. The same money will be spared to the same article still. Wherefore, in proportion as the article can be afforded at a lower price, by reason of an easier or shorter process in the manufacture, it will either grow into more general use, or an improvement will take place in the

quality and fabric, which will demand a proportionable addition of hands. The number of persons employed in the manufactory of stockings has not, I apprehend, decreased, since the invention of stocking-mills. The amount of what is expended upon the article, after subtracting from it the price of the raw material, and consequently what is paid for work in this branch of our manufactories, is not less than it was before. Goods of a finer texture are worn in the place of coarser. This is the change which the invention has produced; and which compensates to the manufactory for every other inconveniency. Add to which, that in the above, and in almost every instance, an improvement which conduces to the recommendation of a manufactory, either by the cheapness or the quality of the goods, draws up after it many dependent employments, in which no abbreviation has taken place.

From the reasoning that has been pursued, and the various considerations suggested in this chapter, a judgement may, in some sort, be formed, how far regulations of law are in

their nature capable of contributing to the support and advancement of population. I say *how far:* for, as in many subjects, so especially in those which relate to commerce, to plenty, to riches, and to the number of people, more is wont to be expected from laws, than laws can do. Laws can only imperfectly restrain that dissoluteness of manners, which, by diminishing the frequency of marriages, impairs the very source of population. Laws cannot regulate the wants of mankind, their mode of living, or their desire of those superfluities which fashion, more irresistible than laws, has once introduced into general usage; or, in other words, has erected into necessaries of life. Laws cannot induce men to enter into marriages, when the expenses of a family must deprive them of that system of accommodation to which they have habituated their expectations. Laws, by their protection, by assuring to the labourer the fruit and profit of his labour, may help to make a people industrious; but, without industry, the laws cannot provide either subsistence or employment; laws cannot make corn grow without toil and care; or trade flourish without art and diligence. In spite of all laws, the ex-

pert, laborious, honest workman will be *employed*, in preference to the lazy, the unskilful, the fraudulent, and evasive: and this is not more true of two inhabitants of the same village, than it is of the people of two different countries, which communicate either with each other, or with the rest of the world. The natural basis of trade is rivalship of quality and price; or, which is the same thing, of skill and industry. Every attempt to *force* trade by operation of law, that is, by compelling persons to buy goods at one market, which they can obtain cheaper and better from another, is sure to be either eluded by the quick-sightedness and incessant activity of private interest, or to be frustrated by retaliation. One half of the commercial laws of many states are calculated merely to counteract the restrictions which have been imposed by other states. Perhaps the only way in which the interposition of law is salutary in trade, is in the prevention of frauds.

Next to the indispensable requisites of internal peace and security, the chief advantage which can be derived to population from the interference of law, appears to me to consist in the encouragement of *agricul-*

ture. This, at least, is the direct way of increasing the number of the people: every other mode being effectual only by its influence upon this. Now the principal expedient by which such a purpose can be promoted, is to adjust the laws of property, as nearly as possible, to the following rules: first, "to give to the occupier all the power "over the soil which is necessary for its "perfect cultivation;"—secondly, "to assign "the whole profit of every improvement to "the persons by whose activity it is carried "on." What we call property in land, as hath been observed above, is power over it. Now it is indifferent to the public in whose hands this power resides, if it be rightly used; it matters not to whom the land belongs, if it be well cultivated. When we lament that great estates are often united in the same hand, or complain that one man possesses what would be sufficient for a thousand, we suffer ourselves to be misled by words. The owner of ten thousand pounds a year, *consumes* little more of the produce of the soil than the owner of ten pounds a year. If the cultivation be equal, the estate in the hands of one great lord, affords subsistence and employment to the

same number of persons as it would do if it were divided amongst a hundred proprietors. In like manner we ought to judge of the effect upon the public interest, which may arise from lands being holden by the king, or by the subject; by private persons, or by corporations; by laymen, or ecclesiastics; in fee, or for life; by virtue of office, or in right of inheritance. I do not mean that these varieties make no difference, but I mean that all the difference they do make respects the cultivation of the lands which are so holden.

There exists in this country, conditions of tenure which condemn the land itself to perpetual sterility. Of this kind is the right of *common*, which precludes each proprietor from the improvement, or even the convenient occupation, of his estate, without (what seldom can be obtained) the consent of many others. This tenure is also usually embarrassed by the interference of *manorial* claims, under which it often happens that the surface belongs to one owner, and the soil to another; so that neither owner can stir a clod without the concurrence of his partner in the property. In many manors, the tenant is restrained from granting leases beyond a

short term of years; which renders every plan of solid improvement impracticable. In these cases, the owner wants, what the first rule of rational policy requires, "sufficient power over the soil for its perfect "cultivation." This power ought to be extended to him by some easy and general law of enfranchisement, partition, and enclosure; which, though compulsory upon the lord, or the rest of the tenants, whilst it has in view the melioration of the soil, and tenders an equitable compensation for every right that it takes away, is neither more arbitrary, nor more dangerous to the stability of property, than that which is done in the construction of roads, bridges, embankments, navigable canals, and indeed in almost every public work, in which private owners of land are obliged to accept that price for their property which an indifferent jury may award. It may here, however, be proper to observe, that although the enclosure of wastes and pastures be generally beneficial to population, yet the enclosure of lands in tillage, in order to convert them into pastures, is as generally hurtful.

But, secondly, agriculture is discouraged by every constitution of landed property

which lets in those, who have no concern in the improvement, to a participation of the profit. This objection is applicable to all such customs of manors as subject the proprietor, upon the death of the lord or tenant, or the alienation of the estate, to a fine apportioned to the improved value of the land. But of all institutions which are in this way adverse to cultivation and improvement, none is so noxious as that of *tithes*. A claimant here enters into the produce, who contributed no assistance whatever to the production. When years, perhaps, of care and toil have matured an improvement; when the husbandman sees new crops ripening to his skill and industry; the moment he is ready to put his sickle to the grain, he finds himself compelled to divide his harvest with a stranger. Tithes are a tax not only upon industry, but upon that industry which feeds mankind; upon that species of exertion which it is the aim of all wise laws to cherish and promote; and to uphold and excite which, composes, as we have seen, the main benefit that the community receives from the whole system of trade, and the success of commerce. And, together with the more general inconveniency that

attends the exaction of tithes, there is this additional evil, in the mode at least according to which they are collected at present, that they operate as a bounty upon pasturage. The burden of the tax falls with its chief, if not with its whole weight, upon tillage; that is to say, upon that precise mode of cultivation which, as hath been shown above, it is the business of the state to relieve and remunerate, in preference to every other. No measure of such extensive concern appears to me so practicable, nor any single alteration so beneficial, as the conversion of tithes into corn-rents. This commutation, I am convinced, might be so adjusted, as to secure to the tithe-holder a complete and perpetual equivalent for his interest, and to leave to industry its full operation and entire reward.

CHAPTER XII.

OF WAR, AND OF MILITARY ESTABLISHMENTS.

BECAUSE the Christian Scriptures describe wars, as what they are, as crimes or judgements, some have been led to believe that it is unlawful for a Christian to bear arms. But it should be remembered that it may be necessary for individuals to unite their force, and for this end to resign themselves to the direction of a common will: and yet, it may be true that that will is often actuated by criminal motives, and often determined to destructive purposes. Hence, although the origin of wars be ascribed, in Scripture, to the operation of lawless and malignant passion*; and though war itself be enumerated among the sorest calamities with which a land can be visited, the profession of a soldier is nowhere forbidden or condemned. When the soldiers demanded of John the Baptist what they should do, he said unto them,

* James, iv. 1.

"Do violence to no man, neither accuse any "falsely, and be content with your wages*." In which answer we do not find that, in order to prepare themselves for the reception of the kingdom of God, it was required of soldiers to relinquish their profession, but only that they should beware of the vices of which that profession was accused. The precept which follows, "Be content with "your wages," supposed them to continue in their situation. It was of a Roman centurion that Christ pronounced that memorable eulogy, "I have not found so great "faith, no, not in Israel†." The first Gentile convert‡ who was received into the Christian Church, and to whom the Gospel was imparted by the immediate and especial direction of Heaven, held the same station: and in the history of this transaction we discover not the smallest intimation, that Cornelius, upon becoming a Christian, quitted the service of the Roman legion; that his profession was objected to, or his continuance in it considered as in any wise inconsistent with his new character.

In applying the principles of morality to

* Luke, iii. 14. † Luke, vii. 9. ‡ Acts, x. 1.

the affairs of nations, the difficulty which meets us, arises from hence, " that the par- " ticular consequence sometimes appears to " exceed the value of the general rule." In this circumstance is founded the only distinction that exists between the case of independent states, and of independent individuals. In the transactions of private persons, no advantage that results from the breach of a general law of justice, can compensate to the public for the violation of the law; in the concerns of empire, this may sometimes be doubted. Thus, that the faith of promises ought to be maintained, as far as is lawful, and as far as was intended by the parties, whatever inconveniency either of them may suffer by his fidelity, in the intercourse of private life, is seldom disputed; because it is evident to almost every man who reflects upon the subject, that the common happiness gains more by the preservation of the rule, than it could do by the removal of the inconveniency. But when the adherence to a public treaty would enslave a whole people; would block up seas, rivers, or harbours; depopulate cities; condemn fertile regions to eternal desolation; cut off a country from its sources of pro-

vision, or deprive it of those commercial advantages to which its climate, produce, or situation naturally entitle it: the magnitude of the particular evil induces us to call in question the obligation of the general rule. Moral Philosophy furnishes no precise solution to these doubts. She cannot pronounce that any rule of morality is so rigid as to bend to no exceptions; nor, on the other hand, can she comprise these exceptions within any previous description. She confesses that the obligation of every law depends upon its ultimate utility; that, this utility having a finite and determinate value, situations may be feigned, and consequently may possibly arise, in which the general tendency is outweighed by the enormity of the particular mischief: but she recalls, at the same time, to the consideration of the inquirer, the almost inestimable importance, as of other general rules of relative justice, so especially of national and personal fidelity; the unseen, if not unbounded, extent of the mischief which must follow from the want of it; the danger of leaving it to the sufferer to decide upon the comparison of particular and general consequences; and the still greater danger of such decisions being drawn into

future precedents. If treaties, for instance, be no longer binding than whilst they are convenient, or until the inconveniency ascend to a certain point, (which point must be fixed by the judgement, or rather by the feelings of the complaining party); or if such an opinion, after being authorised by a few examples, come at length to prevail; one and almost the only method of averting or closing the calamities of war, of either preventing or putting a stop to the destruction of mankind, is lost to the world for ever. We do not say that no evil can exceed this, nor any possible advantage compensate it; but we say that a loss, which affects *all*, will scarcely be made up to the common stock of human happiness by any benefit that can be procured to a single nation, which, however respectable when compared with any other single nation, bears an inconsiderable proportion to the whole. These, however, are the principles upon which the calculation is to be formed. It is enough, in this place, to remark the cause which produces the hesitation that we sometimes feel, in applying rules of personal probity to the conduct of nations.

As between individuals it is found impos-

sible to ascertain every duty by an immediate reference to public utility, not only because such reference is oftentimes too remote for the direction of private consciences, but because a multitude of cases arise in which it is indifferent to the general interest by what rule men act, though it be absolutely necessary that they act by some constant and known rule or other; and as, for these reasons, certain positive constitutions are wont to be established in every society, which, when established, become as obligatory as the original principles of natural justice themselves; so, likewise, it is between independent communities. Together with those maxims of universal equity which are common to states and to individuals, and by which the rights and conduct of the one as well as the other ought to be adjusted, when they fall within the scope and application of such maxims; there exists also amongst sovereigns a system of artificial jurisprudence, under the name of the *law of nations*. In this code are found the rules which determine the right to vacant or newly-discovered countries; those which relate to the protection of fugitives, the privileges of ambassadors, the condition and duties of neutrality,

the immunities of neutral ships, ports, and coasts, the distance from shore to which these immunities extend, the distinction between free and contraband goods, and a variety of subjects of the same kind. Concerning which examples, and indeed the principal part of what is called the *jus gentium*, it may be observed, that the rules derive their moral force (by which I mean the regard that ought to be paid to them by the consciences of sovereigns), not from their internal reasonableness or justice, for many of them are perfectly arbitrary, nor yet from the authority by which they were established, for the greater part have grown insensibly into usage, without any public compact, formal acknowledgement, or even known original; but simply from the fact of their being established, and the general duty of conforming to established rules upon questions, and between parties, where nothing but positive regulations can prevent disputes, and where disputes are followed by such destructive consequences. The first of the instances which we have just now enumerated, may be selected for the illustration of this remark. The nations of Europe consider the sovereignty of newly-discovered

countries as belonging to the prince or state whose subject makes the discovery; and, in pursuance of this rule, it is usual for a navigator, who falls upon an unknown shore, to take possession of it, in the name of his sovereign at home, by erecting his standard, or displaying his flag upon a desert coast. Now nothing can be more fanciful, or less substantiated by any considerations of reason or justice, than the right which such discovery, or the transient occupation and idle ceremony that accompany it, confer upon the country of the discoverer. Nor can any stipulation be produced, by which the rest of the world have bound themselves to submit to this pretension. Yet when we reflect that the claims to newly-discovered countries can hardly be settled, between the different nations which frequent them, without some positive rule or other; that such claims, if left unsettled, would prove sources of ruinous and fatal contentions; that the rule already proposed, however arbitrary, possesses one principal quality of a rule,—determination and certainty; above all, that it is acquiesced in, and that no one has power to substitute another, however he might contrive a better, in its place: when we reflect upon these pro-

perties of the rule, or rather upon these consequences of rejecting its authority, we are led to ascribe to it the virtue and obligation of a precept of natural justice, because we perceive in it that which is the foundation of justice itself,—public importance and utility. And a prince who should dispute this rule, for the want of regularity in its formation, or of intelligible justice in its principle, and by such disputes should disturb the tranquillity of nations, and at the same time lay the foundation of future disturbances, would be little less criminal than he who breaks the public peace by a violation of engagements to which he had himself consented, or by an attack upon those national rights which are founded immediately in the law of nature, and in the first perceptions of equity. The same thing may be repeated of the rules which the law of nations prescribes in the other instances that were mentioned, namely, that the obscurity of their origin, or the arbitrariness of their principle, subtracts nothing from the respect that is due to them, when once established.

War may be considered with a view to its *causes* and to its *conduct*.

The *justifying* causes of war are, deliberate invasions of right, and the necessity of maintaining such a balance of power amongst neighbouring nations, as that no single state, or confederacy of states, be strong enough to overwhelm the rest. The objects of just war are, precaution, defence, or reparation. In a larger sense, every just war is a *defensive* war, inasmuch as every just war supposes an injury perpetrated, attempted, or feared.

The *insufficient* causes or *unjustifiable* motives of war, are the family-alliances, the personal friendships, or the personal quarrels of princes; the internal disputes which are carried on in other nations; the justice of other wars, the extension of territory, or of trade; the misfortunes or accidental weakness of a neighbouring or rival nation.

There are *two* lessons of rational and sober policy, which, if it were possible to inculcate them into the councils of princes, would exclude many of the motives of war, and allay that restless ambition which is constantly stirring up one part of mankind against another. The first of these lessons admonishes princes to "place their glory and their "emulation, not in extent of territory, but "in raising the greatest quantity of happi-

"ness out of a given territory." The enlargement of territory by conquest is not only not a just object of war, but, in the greater part of the instances in which it is attempted, not even desirable. It is certainly not desirable where it adds nothing to the numbers, the enjoyments, or the security of the conquerors. What commonly is gained to a nation, by the annexing of new dependencies, or the subjugation of other countries to its dominion, but a wider frontier to defend; more interfering claims to vindicate; more quarrels, more enemies, more rebellions to encounter; a greater force to keep up by sea and land; more services to provide for, and more establishments to pay? And, in order to draw from these acquisitions something that may make up for the charge of keeping them, a revenue is to be extorted, or a monopoly to be enforced and watched, at an expense which costs half their produce. Thus the provinces are oppressed, in order to pay for being ill-governed; and the original state is exhausted in maintaining a feeble authority over discontented subjects. No assignable portion of country is benefited by the change; and if the sovereign appear to himself to be enriched or strengthened, when

every part of his dominion is made poorer and weaker than it was, it is probable that he is deceived by appearances. Or were it true that the grandeur of the prince is magnified by those exploits; the glory which is purchased, and the ambition which is gratified, by the distress of one country without adding to the happiness of another, which at the same time enslaves the new and impoverishes the ancient part of the empire, by whatever names it may be known or flattered, ought to be an object of universal execration; and oftentimes not more so to the vanquished, than to the very people whose armies or whose treasures have achieved the victory.

There are, indeed, two cases in which the extension of territory may be of real advantage, and to both parties. The first is, where an empire thereby reaches to the natural boundaries which divide it from the rest of the world. Thus we account the British Channel the natural boundary which separates the nations of England and France; and if France possessed any countries on this, or England any cities or provinces on that side of the sea, the recovery of such towns and districts to what may be called their

natural sovereign, though it may not be a just reason for commencing war, would be a proper use to make of victory. The other case is, where neighbouring states, being severally too small and weak to defend themselves against the dangers that surround them, can only be safe by a strict and constant junction of their strength; here conquest will effect the purposes of confederation and alliance; and the union which it produces is often more close and permanent than that which results from voluntary association. Thus, if the heptarchy had continued in England, the different kingdoms of it might have separately fallen a prey to foreign invasion: and although the interest and danger of one part of the island were in truth common to every other part, it might have been difficult to have circulated this persuasion amongst independent nations; or to have united them in any regular or steady opposition to their continental enemies, had not the valour and fortune of an enterprising prince incorporated the whole into a single monarchy. Here, the conquered gained as much by the revolution, as the conquerors. In like manner, and for the same reason, when the two royal families of Spain were

met together in one race of princes, and the several provinces of France had devolved into the possession of a single sovereign, it became unsafe for the inhabitants of Great Britain any longer to remain under separate governments. The union of England and Scotland, which transformed two quarrelsome neighbours into one powerful empire, and which was first brought about by the course of succession, and afterwards completed by amicable convention, would have been a fortunate conclusion of hostilities, had it been effected by the operations of war. These two cases being admitted, namely, the obtaining of natural boundaries and barriers, and the including under the same government those who have a common danger and a common enemy to guard against; I know not whether a third can be thought of, in which the extension of empire by conquest is useful even to the conquerors.

The second rule of prudence which ought to be recommended to those who conduct the affairs of nations, is, "never to pursue "national *honour* as distinct from national "*interest*." This rule acknowledges that it is often necessary to assert the honour of a nation for the sake of its interest. The spirit

and courage of a people are supported by flattering their pride. Concessions which betray too much of fear or weakness, though they relate to points of mere ceremony, invite demands and attacks of more serious importance. Our rule allows all this; and only directs that, when points of honour become subjects of contention between sovereigns, or are likely to be made the occasions of war, they be estimated with a reference to utility, and not *by themselves*. "The dignity "of his crown, the honour of his flag, the "glory of his arms," in the mouth of a prince, are stately and imposing terms; but the ideas they inspire, are insatiable. It may be always glorious to conquer, whatever be the justice of the war, or the price of the victory. The dignity of a sovereign may not permit him to recede from claims of homage and respect, at whatever expense of national peace and happiness they are to be maintained, however unjust they may have been in their original, or in their continuance however useless to the possessor, or mortifying and vexatious to other states. The pursuit of honour, when set loose from the admonitions of prudence, becomes in kings a wild and romantic passion: eager to engage,

and gathering fury in its progress, it is checked by no difficulties, repelled by no dangers; it forgets or despises those considerations of safety, ease, wealth, and plenty, which, in the eye of true public wisdom, compose the objects to which the renown of arms, the fame of victory, are only instrumental and subordinate. The pursuit of interest, on the other hand, is a sober principle; computes costs and consequences; is cautious of entering into war; stops in time: when regulated by those universal maxims of relative justice, which belong to the affairs of communities as well as of private persons, it is the right principle for nations to proceed by; even when it trespasses upon these regulations, it is much less dangerous, because much more temperate than the other.

II. The conduct of war.—If the cause and end of war be justifiable; all the means that appear necessary to the end, are justifiable also. This is the principle which defends those extremities to which the violence of war usually proceeds: for, since war is a contest by *force* between parties who acknowledge no common superior, and since it includes not in its idea the supposition of any convention which should place limits to the

operations of force, it has naturally no boundary but that in which force terminates, —the destruction of the life against which the force is directed. Let it be observed, however, that the licence of war authorises no acts of hostility but what are necessary or conducive to the end and object of the war. Gratuitous barbarities borrow no excuse from this plea: of which kind is every cruelty and every insult that serves only to exasperate the sufferings, or to incense the hatred of an enemy, without weakening his strength, or in any manner tending to procure his submission; such as the slaughter of captives, the subjecting of them to indignities or torture, the violation of women, the profanation of temples, the demolition of public buildings, libraries, statues, and in general the destruction or defacing of works that conduce nothing to annoyance or defence. These enormities are prohibited not only by the practice of civilised nations, but by the law of nature itself; as having no proper tendency to accelerate the termination, or accomplish the object of the war; and as containing that which in peace and war is equally unjustifiable,—ultimate and gratuitous mischief.

There are other restrictions imposed upon the conduct of war, not by the law of nature primarily, but by the *laws of war* first, and by the law of nature as seconding and ratifying the laws of war. The laws of war are part of the law of nations; and founded, as to their authority, upon the same principle with the rest of that code, namely, upon the fact of their being established, no matter when or by whom; upon the expectation of their being mutually observed, in consequence of that establishment; and upon the general utility which results from such observance. The binding force of these rules is the greater, because the regard that is paid to them must be universal or none. The breach of the rule can only be punished by the subversion of the rule itself: on which account, the whole mischief that ensues from the loss of those salutary restrictions which such rules prescribe, is justly chargeable upon the first aggressor. To this consideration may be referred the duty of refraining in war from poison and from assassination. If the law of nature simply be consulted, it may be difficult to distinguish between these and other methods of destruction, which are practised without scruple by nations at war,

If it be lawful to kill an enemy at all, it seems lawful to do so by one mode of death as well as by another; by a dose of poison, as by the point of a sword; by the hand of an assassin, as by the attack of an army: for, if it be said that one species of assault leaves to an enemy the power of defending himself against it, and that the other does not; it may be answered, that we possess at least the same right to cut off an enemy's defence, that we have to seek his destruction. In this manner might the question be debated, if there existed no rule or law of war upon the subject. But when we observe that such practices are at present excluded by the usage and opinions of civilised nations; that the first recourse to them would be followed by instant retaliation; that the mutual licence which such attempts must introduce, would fill both sides with the misery of continual dread and suspicion, without adding to the strength or success of either; that when the example came to be more generally imitated, which it soon would be, after the sentiment that condemns it had been once broken in upon, it would greatly aggravate the horrors and calamities of war, yet procure no superiority to any of the nations engaged in it;

when we view these effects, we join in the public reprobation of such fatal expedients, as of the admission amongst mankind, of new and enormous evils without necessity or advantage. The law of nature, we see at length, forbids these innovations, as so many transgressions of a beneficial general rule actually subsisting.

The licence of war then acknowledges *two* limitations: it authorises no hostilities which have not an apparent tendency to effectuate the object of the war; it respects those positive laws which the custom of nations hath sanctified, and which, whilst they are mutually conformed to, mitigate the calamities of war, without weakening its operations, or diminishing the power or safety of belligerent states.

Long and various experience seems to have convinced the nations of Europe, that nothing but a *standing army* can oppose a standing army, where the numbers on each side bear any moderate proportion to one another. The first standing army that appeared in Europe after the fall of the Roman legion, was that which was erected in France by

Charles VII. about the middle of the fifteenth century: and that the institution hath since become general, can only be attributed to the superiority and success which are everywhere observed to attend it. The truth is, the closeness, regularity, and quickness of their movements; the unreserved, instantaneous, and almost mechanical obedience to orders; the sense of personal honour, and the familiarity with danger, which belong to a disciplined, veteran, and embodied soldiery, give such firmness and intrepidity to their approach, such weight and execution to their attack, as are not to be withstood by loose ranks of occasional and newly-levied troops, who are liable by their inexperience to disorder and confusion, and in whom fear is constantly augmented by novelty and surprise. It is possible that a *militia*, with a great excess of numbers, and a ready supply of recruits, may sustain a defensive or a flying war against regular troops: it is also true that any service, which keeps soldiers for a while together, and inures them by little and little to the habits of war and the dangers of action, transforms them in effect into a standing army. But upon this plan it may be necessary for almost a whole nation to go

out to war to repel an invader; beside that, a people so unprepared must always have the seat, and with it the miseries of war, at home, being utterly incapable of carrying their operations into a foreign country.

From the acknowledged superiority of standing armies, it follows, not only that it is unsafe for a nation to disband its regular troops, whilst neighbouring kingdoms retain theirs; but also that regular troops provide for the public service at the least possible expense. I suppose a certain quantity of military strength to be necessary, and I say that a standing army costs the community less than any other establishment which presents to an enemy the same force. The constant drudgery of low employments is not only incompatible with any great degree of perfection or expertness in the profession of a soldier, but the profession of a soldier almost always unfits men for the business of regular occupations. Of three inhabitants of a village, it is better that one should addict himself entirely to arms, and the other two stay constantly at home to cultivate the ground, than that all the three should mix the avocations of a camp with the business of husbandry. By the former arrangement, the

country gains one complete soldier, and two industrious husbandmen; from the latter, it receives three raw militia-men, who are at the same time three idle and profligate peasants. It should be considered also, that the emergencies of war wait not for seasons. Where there is no standing army ready for immediate service, it may be necessary to call the reaper from the fields in harvest, or the ploughman in seed-time; and the provision of a whole year may perish by the interruption of one month's labour. A standing army, therefore, is not only a more effectual, but a cheaper method of providing for the public safety, than any other, because it adds more than any other to the common strength, and takes less from that which composes the wealth of a nation,—its stock of productive industry.

There is yet another distinction between standing armies and militias, which deserves a more attentive consideration than any that has been mentioned. When the state relies, for its defence, upon a militia, it is necessary that arms be put into the hands of the people at large. The militia itself must be numerous, in proportion to the want or inferiority of its discipline, and the imbecility

or defects of its constitution. Moreover, as such a militia must be supplied by rotation, allotment, or some mode of succession whereby they who have served a certain time are replaced by fresh draughts from the country, a much greater number will be instructed in the use of arms, and will have been occasionally embodied together, than are actually employed, or than are supposed to be wanted, at the same time. Now what effects upon the civil condition of the country may be looked for from this general diffusion of the military character, becomes an inquiry of great importance and delicacy. To me it appears doubtful whether any government can be long secure, where the people are acquainted with the use of arms, and accustomed to resort to them. Every faction will find itself at the head of an army; every disgust will excite commotion, and every commotion become a civil war. Nothing, perhaps, can govern a nation of armed citizens but that which governs an army;—despotism. I do not mean that a regular government would become despotic by training up its subjects to the knowledge and exercise of arms, but that it would ere long be forced to give way to despotism in some other

shape; and that the country would be liable to what is even worse than a settled and constitutional despotism,—to perpetual rebellions, and to perpetual revolutions; to short and violent usurpations; to the successive tyranny of governors, rendered cruel and jealous by the danger and instability of their situation.

The same purposes of strength and efficacy which makes a standing army necessary at all, make it necessary, in mixed governments, that this army be submitted to the management and direction of the prince: for, however well a popular council may be qualified for the offices of legislation, it is altogether unfit for the conduct of war: in which, success usually depends upon vigour and enterprise; upon secrecy, dispatch, and unanimity; upon a quick perception of opportunities, and the power of seizing every opportunity immediately. It is likewise necessary that the obedience of an army be as prompt and active as possible; for which reason it ought to be made an obedience of will and emulation. Upon this consideration is founded the expediency of leaving to the prince not only the government and destination of the army, but the appointment and promotion of its

officers: because a design is then alone likely to be executed with zeal and fidelity, when the person who issues the order, chooses the instruments, and rewards the service. To which we may subjoin, that, in governments like ours, if the direction and *officering* of the army were placed in the hands of the democratic part of the constitution, this power, added to what they already possess, would so overbalance all that would be left of regal prerogative, that little would remain of monarchy in the constitution, but the name and expense; nor would these probably remain long.

Whilst we describe, however, the advantages of standing armies, we must not conceal the danger. These properties of their constitution,—the soldiery being separated in a great degree from the rest of the community, their being closely linked amongst themselves by habits of society and subordination, and the dependency of the whole chain upon the will and favour of the prince,—however essential they may be to the purposes for which armies are kept up, give them an aspect in no wise favourable to public liberty. The danger however is diminished by maintaining, on all occasions, as much alliance

of interest, and as much intercourse of sentiment, between the military part of the nation and the other orders of the people, as are consistent with the union and discipline of an army. For which purpose, officers of the army, upon whose disposition towards the commonwealth a great deal may depend, should be taken from the principal families of the country, and at the same time also be encouraged to establish in it families of their own, as well as be admitted to seats in the senate, to hereditary distinctions, and to all the civil honours and privileges that are compatible with their profession: which circumstances of connexion and situation will give them such a share in the general rights of the people, and so engage their inclinations on the side of public liberty, as to afford a reasonable security that they cannot be brought, by any promises of personal aggrandisement, to assist in the execution of measures which might enslave their posterity, their kindred, and their country.

THE END.

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